2093.

SUPREME COURT OF THE UNITED STATES.

No. 74.

WILLIAM P. LEA, APP'T,

vs.

THE POLK COUNTY COPPER COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF TENNESSEE.

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UNITED STATES CIRCUIT COURT,
District of East Tennessee, Knoxville.

Transcript of record from the Circuit Court of the United States for the District of East Tennessee, at Knoxville, in the case of Wm. Pinckney Lea *vs.* Polk County Copper Company, Thomas H. Calloway, and others; taken by appeal, at May Term, 1857 (on the 23d day of June) to the Supreme Court of the United States.

WM. P. LEA
vs.
POLK COUNTY COPPER COMPANY and others.

Bond.

DISTRICT OF EAST TENNESSEE:

Know all men by these presents, That we, William P. Lea and Albert M. Lea, jr., are jointly and severally held and firmly bound unto the Polk County Copper Company and others, in the penal sum of five hundred dollars to be void on condition that the said William P. Lea doth with effect prosecute a suit by him this day commenced in the Court of the United States for the Eighth Circuit in the District of East Tennessee, against the said Polk County Copper Company and others, otherwise pay and satisfy all costs and damages which may be awarded for failure therein.

Witness our hands and seals this 29th day of September, 1854.

WM. P. LEA [SEAL].
A. M. LEA, JR. [SEAL].

Attest D. H. CUMMINGS,
Clk U. S. C. C.

Summons.

The President of the United States to the Marshal of East Tennessee District, greeting:

You are hereby commanded to summon the Polk County Copper Company, Charles Barnuse, Isham Davis, Martin Sheffield, John Tonkins, Clarinda and her husband Crunby, Thomas H. Calloway, Euclid Waterhouse, John Caldwell, Alexander H. Keith, Samuel Congden, Charles Congden, Jemima Masten, John J. Masten, Sarah A. Masten, Susan N. Mastin, Ruben F. Maston, Thomas H. Mastun, Daniel C. Maston, William W. Maston, and Martha J. Maston and Jemima Maston, as guardian, to appear before the honorable the Judges of the Court of the United States for the Eighth Circuit, in the District of East Tennessee, at the court-house in Knoxville, on first Monday of November next, to answer the bill of complaint of William Pinckney Lea, filed on this day in said

Court, and you will also leave with each of said defendants a copy of said bill herewith issued to you, and have you then there this writ.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the third Monday of April, 1854, and 68 year of the independence of the United States.

D. H. CUMMINGS, *Clk U. S. C. C.*

The following endorsements on back of summons:—

"Executed this writ as to Samuel Congden, Martin Sheffield, Isham Davis, John Tonkins, and Charles Burnese, and delivered a copy of bill to each October 2d, 1854. The president of the company being out of the State of Tennessee, executed this writ on Samuel Congden, the secretary of the company, and delivered him a copy of bill as secretary of said company Oct. 2d, 1854."

Executed as to Thomas H. Calloway, A. H. Keith, and Euclid Waterhouse, and delivered each a copy of bill Oct. 3d, 1854.

Executed as to Jemima Maston, John Maston, Sarah A. Maston, Susan A. Maston, Reuben F. Maston, Thos. H. Maston, David C. Maston, Wm. U. Maston, and Martha J. Maston, and delivered to each a copy of bill Oct. 4th, 1854; also executed on Jemima Maston, guardian, &c., and delivered a copy of bill to her as guardian October 4th, 1854. Clarinda Crumby and her husband Crumby, Charles Congden, not found, they being out of the State of Tennessee, the said Clarinda said to be in Georgia, Crumby said to be in Arkansas, and Charles Congden said to be in New York.

SHADE CALLOWAY, *Dept. Marshal.*

Executed as to John Caldwell by going to his dwelling-house, and he being absent, left a copy of this writ and a copy of bill with his son Caldwell, Oct. 10th, 1854.

SHADE CALLOWAY, *Dept. Marshal.*

Original Bill.

To the Judges of the Circuit Court of the United States for the District of East Tennessee, William Pinckney Lea, of Dalton, and a citizen of the State of Georgia, brings this his bill against the Polk County Copper Company, a corporation chartered by the State of Tennessee, and all the corporators and stockholders therein being citizens of the State of Tennessee and of the State of New York; against Charles Burnese, of Ducktown, and a citizen of the State of Tennessee; against Isham Davis, of Ducktown, and a citizen of the State of Tennessee; against Martin Sheffield, of Ducktown, and a citizen of the State of Tennessee; against John Tonkins, of Ducktown, and a citizen of the State of Tennessee; against Clarinda Crumby and her husband Crumby, of Ducktown, and citizens of the State of Tennessee; against Thomas H. Calloway, of Cleveland, and a citizen of the State of Tennessee; against Euclid Waterhouse, of Cleveland, and a citizen of the State of Tennessee; against John Caldwell, of Jefferson County, and a

citizen of the State of Tennessee; against Alexander H. Keith, of Athens, and a citizen of the State of Tennessee; against Samuel Congden, of Ducktown, and a citizen of the State of Tennessee; against Charles Congden, of Brooklyn, and a citizen of the State of New York; and Jemima Maston, widow of Thomas Maston, dec'd, and John J. Maston, Sarah A. Maston, Susan A. Maston, Reuben F. Maston, Thomas H. Maston, David C. Maston, William W. Maston, and Martha J. Maston, all of whom are of McMinn County, and citizens of the State of Tennessee, and are the heirs and children of the said Thomas Maston, dec'd, and some of whom are minors, but how many are not known, but for all of whom who are minors the said Jemima Maston is the regular guardian.

And thereupon your orator complains and says that on the 5th day of April, 1842, he your orator entered as general enterer in the office of the entry taker of the Ocoee District of the State of Tennessee, and within the Eastern District of Tennessee, a tract of land of eighty acres, which said land was then vacant, and subject to general entry, "the east half of the southwest quarter of sec-section" fifteen fr. township four south, and range five east of the basis line in the Ocoee District, at one cent per acre, which sum was then paid to the entry taker, and a certificate of said entry regularly made out. A regularly certified copy of said entry or location, which was thus handed by your orator to the entry taker, is hereunto filed as (Exhibit No. 1), and prayed to be taken as part of this bill. Your orator further complaining says that on the 21st day of August, 1842, a grant was issued to your orator by the name and style of "W. P. Lea," as will be seen by reference to the certificate of the Secretary of State, herewith filed as (Exhibit No. 2), and prayed to be taken as part of this bill, and also of the copy from the register's books of the Register of said Ocoee District, herewith filed as (Exhibit No. 3), and prayed to be taken as part of this bill. It will be seen that the grant is numbered 5744, and recites only an entry dated 5th April, 1842, and for eighty acres. It will be seen furthermore that the copy of the grant hereunto exhibited, and which is a fac simile as near as may be from the register's book as it now stands, states *number of entry thus*, 5446–47, and in the *description of the land* states it to be the east half of the southwest, *and the north half of the northeast*, quarter, &c., and it purports to be issued to William *Park* Lea, the letters "*ark*" being added after the original was written, and by a different hand, and not by the register, as your orator understands and believes, and running into the L on the word "Lea." In all three of these particulars the register's book and any copy now to be had therefrom, to wit, *No. of entry*, *description* of land, and *grantee*, differs from the original entry and the records of the office of the Secretary of State, as will be seen by reference to exhibits aforesaid.

Your orator further complaining shows to your honor that Luke Lea, who was a cousin of your orator, was then, to wit, in 1842, and

for several years thereafter, the entry taker of said district, and your orator then resided in an adjoining county, and was well known to said entry taker. The said entry taker had a son by the name of William Park Lea, then, to wit, in 1842, only about sixteen or seventeen years of age, and being with his father, and for whom the said entry taker made a number of entries in the said Ocoee District, and the means adopted by said entry taker to distinguish between the entries of your orator and those thus made for his son was to make those for his son in the name William *Park* Lea, and this was thus done by him in the *place* of said district and in the *certificates* of entry, for the express purpose of distinguishing the lands of your orator and those of his son, and this characteristic of distinction was carried into the *grants*, as will be seen by the certificates of the grants issued to said William P. Lea, and which certificate is herewith filed as (Exhibit No. 4), and prayed to be taken as part of this bill.

Your orator further complaining says that at the time this and the other entries of land was made by your orator in said district, the land was considered as worth but little, and was really entered by your orator for grazing purposes or mountain range for cattle, and he paid but little attention either to the land itself or to the preserving the monuments of the title, and trusted to his relation, the entry taker, to have his title properly made out and preserved for him. The said land continued for several years, and until within the last two or three years, to be considered of little value, and in the mean time your orator having left the country, and the said William Park Lea being still a minor, constituted one John Hambright his agent and attorney, and also left the country, and the said Hambright for said William Park Lea claimed the said eighty acres of land as the property of said William Park, and conveyed it to one John Davis, and the said Davis conveyed it to said Alexander H. Keith, John Caldwell, and Thomas Maston, dec'd, and the said Keith and Caldwell, and the said defendants Maston, as widow and heirs of Thomas Maston, dec'd, by themselves and their guardian, the said Jemima Maston, have assumed to convey the same to the said Polk County Copper Company, of whom the said defendants, Calloway, Waterhouse, Keith, Caldwell, Samuel and Charles Congden, and as your orator is informed the corporators and stockholders. Your orator had in the meantime, before the said Hambright had thus assumed control over and right to convey said land, moved to the State of Alabama, and had been attacked with fever and ague which continued upon him for several years, and which was so severe in their attack and continuance as to very seriously impair the mind and almost totally destroy the memory. In this state of mind your orator continued for some two or three years or more, and indeed to the present time his memory is not so good as formerly, nor is his mind a strong one. Your orator wholly lost sight of his said entry until the same was brought to his mind, as will be more specifically

hereinafter shown, and had no reason whatever to suppose that the agent of William *Park* Lea was assuming the ownership of or right to convey the same. In this attitude, that is as detailed in the foregoing part of this bill, copper ore and indications of a very valuable character was found in the neighborhood of said land, and perhaps on it. And the said William *Park* Lea instituted, or caused to be instituted, a suit for said land against the persons claiming the same under purchase from his agent, but which agency was created or sale made, perhaps both, during his minority, and in the institution and conduct of said suit for said William Park Lea the said Thomas H. Calloway was the principal if not sole actor and agent, as your orator understands, believes, and charges. This suit was against said Keith, Caldwell, and Maston, dec'd. And pending the same, it became known that the copper mine on said land was one of the most valuable of all the valuable copper mines of Ducktown, and worth from one to two millions of dollars, as your orator believes and understands, and with things thus existing in some way a compromise was made by which the said William *Park* Lea made a non quit claim with strong, unusually strong language, negativing any for title, and received only *two* thousand dollars absolutely, and with the further right of eight thousand dollars if the title was not questioned, or some such words, and the said *Calloway* became with the said Waterhouse and Congdens in some way interested in said land. As to this suit by William Park Lea, who was his agent when it was compromised, its terms, consideration, &c., with all the papers exhibiting the contract of compromise, and the manner of Calloway, Waterhouse, and Congdens becoming interested, the defendants are required to answer specifically, and produce the papers. Up to this period of time your orator was living quietly at a considerable distance from the land, having no suspicion that his rights were being in any way intruded upon, or that any minerals had been discovered upon his lands. After the compromise of the suit of said William Park Lea, one Alfred D. Taylor, a neighbor of your orator, came to your orator and told your orator that he, your orator, was a rich man, but that the said Taylor was the only person having information of the facts, and unless your orator would share with him he would preserve the secret, and your orator should never be benefited thereby. Your orator was very careful in inquiring if nobody else knew the fact, and was assured by said Taylor that they did not, that he alone knew it, and it should die with him. Under these representations, which were false, your orator agreed to give the said Taylor one-half of the estate he might discover to him, when the said Taylor told him that the property was held adversely, and there would have to be a suit about it, and that he would pay the expenses of the suit, and that he would just take a deed for one-half the property and execute his note for five hundred dollars, and when that gave out he would still raise more to pay expenses of suit. The deed and other paper was presented in a short

time by said Taylor, and executed by your orator, conveying to said Taylor one-half of said eighty acres of land. In a very short time the said Taylor had conveyed to F. W. Lea, who is a brother of said William Park Lea, and son of the entry taker aforesaid, one-half his interest for a small sum, and your orator understood that the said Taylor had been up in the region of the land and near or at Cleveland, and had then learned the fact that said land was the property of your orator, and this fact was known to many persons. The land at this time was worth from one to two millions of dollars or more, and the said conveyance to Taylor was obtained by false representations, without consideration, while the land was adversely held, and by imposition upon a credulous, weak man, by one representing himself to be a friend, and in whom your orator had confidence, and the same is void as your orator charges.

Your orator further complaining says that he has never seen the original grant, and he does not know where the same is certainly. The same was left as others were left in the register's office by your orator; that is, when he had made the entry and paid all fees, he trusted to the officer, his kinsman, to attend to his title. The said grant was not, as your orator understands and believes, and charges, in the possession of William Park Lea or his said agent Hambright until very recently, if it is yet. When or about the time that the said Hambright sold and conveyed the said land to Davis as aforesaid, he made an affidavit that said grant was lost, as your orator understands. But now your orator hears in vague terms that some of the defendants either have the original grant or know where it is, and all the said defendants are required to answer as to their knowledge of said original grant No. 5744, dated 21st August, 1842, Where the same is now? Who has it? In whose hands has the same been since it was taken from the office of the register? And they are required to produce the same and file it with their answer.

Your orator further complaining says that he has instituted an action of ejectment on the common law side of your honorable Court, with notice to the said defendants, the Polk County Copper Company, Charles Burnese, Isham Davis, Martin Sheffield, John Tonkins, and Clarinda Crumby and her husband Crumby, the persons in the possession of the land at the institution of said suit, which said suit is now pending in your honorable Court.

Your orator further complaining says that if said grant, when produced, shall correspond with the copy, or shall in any respect be different from the entry and certificate of the Secretary of State as exhibited, the same will be erroneous, and has either been altered since its issuance, or if not altered, the same was by mistake or by fraud issued improperly, and in either event your orator asks that the same be corrected, and if the said original shall not be produced and is lost, then your orator asks that the register's books be corrected, so that a copy from them corrected may be used in trial of the ejectment.

Your orator further charges that the said Polk County Copper Company are constantly, and have for some time, been taking out large quantities of copper ore from said land. Some of the other defendants, but how many of them your orator does not know, are also engaged in digging up and taking the ore from said lands, a portion of the defendants so committing waste, being servants and agents of said corporations, and the others being either joint owners or part owners with, or stockholders in said company. The true and full facts are thus laid, as well as others connected with the case, your orator has found it very difficult, after much investigation, to attain to a knowledge of; but so it is the said tract of land is now occupied and held against your orator and his title thereto by the defendants, or some of them claiming title thereto, pretending to hold the same under either the sale made by said Hambright as aforesaid, as agent of William Park Lea, or under the relinquishment of said William Park Lea as aforesaid, or both, and if there be any other person in any way claiming to be interested in said lands or the minerals thereon the defendants are required to disclose who they are, their names, residence, quantum and character of interest claimed; and each defendant is required to answer how this is, and whether the adverse claim thus set up to your orator's right great waste is now being committed and has been committed upon said land.

Your orator further complaining says that the said defendant, Thomas H. Calloway, married the daughter of the said Luke Lea, the entry taker, and had knowledge of his entering lands for his son during his minority, of the age of said William Park Lea, of the fact of his father entering for him by the name William Park Lea to distinguish them from those of your orator, and of the plan of said Ocoee District and the entries thereon; of the value of said eighty acres, and of the just claim and title of your orator thereto, as your orator believes and charges, and which knowledge on the part of said Calloway was the reason, as your orator charges, for the said compromise of the suit of William Park Lea against Keith and others for the small sum aforesaid, and the fact of the further payment thereupon being made contingent upon the title being questioned.

Your orator prays that the Polk County Copper Company, Charles Burnese, Isham Davis, Martin Sheffield, John Tonkins, Clarinda Crumby and her husband Crumby, Thomas H. Calloway, Euclid Waterhouse, John Caldwell, Alexander H. Keith, Samuel Congden, Charles Congden, Jemima Maston, John J. Maston, Sarah A. Maston, Susan N. Maston, Reuben F. Maston, Thomas H. Maston, David C. Maston, William W. Maston, and Martha J. Maston, be made defendants to this bill, that process may issue from the office of the Master at Knoxville, be served, and the defendants be required to make their appearance in said cause on the first Monday of November next, and to plead, answer, or demur to said bill, and

to any part thereof, according to the rules of your honorable Court, and that the defendants and each of them be required to answer any part of said bill as fully as if the same were here again repeated and they specially interrogated in relation thereto, and that they and each of them answer as well from their personal knowledge as from their information and belief.

Your orator further prays that said original grant, if the same shall be produced and found to have been altered since its issuance, or to have issued improperly by mistake or fraud, so as not to conform to the entry aforesaid, be corrected by decree of your honorable Court and made to conform thereto. And if said original grant shall not be not produced, then the prayer of your orator is that the register's book aforesaid and the copy therein may be corrected and made to conform to the entry aforesaid. And may it please your Honor to grant the most gracious writ of injunction inhibiting the defendants in said action of ejectment, and all the defendants to this suit who may become defendants in said action of ejectment, from relying upon the said conveyance made by your orator to said Taylor in the defence of said action of ejectment. And may it further please your honor to enjoin the trial of said action of ejectment until the hearing and final decree in this cause, so that your orator may have the benefit of the said original grant, or of a copy from the register's books when the same shall be corrected. Or, if the said grant shall be found to have been improperly issued, that then your Honor will correct and grant and divert and vest title, so that your orator can have the decree to use on the trial of said action. And may it also please your Honors to grant a further injunction, inhibiting the digging, raising, and removing the mineral ore from said land, and also the cutting *the cutting* the timber thereon, or the sinking shafts therein, or the committing waste of any kind thereon; or, if this be improper, then your orator prays for the appointment of a receiver, who shall superintend the working the said mines and make faithful report thereof, subject to the decree of the Court. And may it also please your honors to order an account of the rents and profits, amount of minerals, copper ore, &c., taken from said lands by defendants or any of them, and by final decree direct the same to be paid to your orator.

And may it also please your honor to remove all clouds from the title of your orator by declaring all the alleged titles of defendants, or either of them, void, and direct the possession of said land to be surrendered to your orator.

This is the first application for an injunction in this cause. And if in anything your orator has mistaken his remedy, may it please your Honor to grant to your orator all such other further or different relief as is consistent with equity and good conscience and compatible with the rules of your honorable Court.

And the prayer of your orator being granted as in duty bound, &c.

MEIGS, NELSON, & SNEED, *Sol.*

UNITED STATES OF AMERICA,
District of East Tennessee.

This day personally appeared before me, David H. Cummings, Clerk and Master of the Circuit Court of the United States for the District of East Tennessee, at office, William Pinckney Lea, and made oath in due form of law that the facts stated in the foregoing bill of complaint as of his own knowledge are true, and those facts stated on information he believes to be true.

WILLIAM PINCKNEY LEA.

Sworn to and subscribed before me this 29th day of September, 1854.

DAVID H. CUMMINGS,
Clerk and Master.

Exhibit No. 1 *to Original Bill.*

No. 5446.

William P. Lea entered, as General Enterer, eighty acres of land, being the east half of the southwest quarter of section fifteen, fr. township four south and range five east of the basis line in the Ocoee District; beginning at the southwest corner of said quarter. Entered at one cent per acre.

April 5, 1842.

I certify that the foregoing to be a true copy from the records, and that I have carefully examined the same, and find it an exact copy.

Given under my hand at office, September 9, 1849.

JAMES S. BRADFORD,
Register, &c., of the Ocoe District.

Exhibit No. 2 *to Original Bill.*

It appears from the records in my office that the following grants were issued to W. P. Lea for land in the Ocoee District, viz. :—

No. 5599	for	9	acres,	dated	10th August,	1842.
No. 5701	"	80	"	"	15th "	"
No. 5744	"	80	"	"	21st "	"
No. 5764	"	40	"	"	21st "	"
No. 6215	"	160	"	"	7th November	"
No. 6250	"	160	"	"	8th December	"
No. 6251	"	80	"	"	"	"
No. 6252	"	80	"	"	"	"
No. 6253	"	160	"	"	"	"
No. 6254	"	80	"	"	"	"
No. 6255	"	80	"	"	"	"
No. 6256	"	40	"	"	"	"
No. 6257	"	80	"	"	"	"
No. 6258	"	160	"	"	"	"
No. 6259	"	160	"	"	"	"
No. 6259	"	280	"	"	"	"

No. 6260 for 320 acres, dated 8th December, 1842.
No. 6261 " 320 " " " "
No. 6262 " 320 " " " "
No. 6263 " 120 " " " "
21 No. 6264 " 200 " " " "

W. B. A. RAMSEY,
July 8th, 1854. *Secretary of State.*

It also appears from the records in my office that the following grants were issued to W. P. Lea in the Ocoee District, viz. :—

No. 6216 for 160 acres, dated 7th November, 1842.
No. 6217 " 160 " " " "
No. 6218 " 160 " " " "
No. 6219 " 160 " " " "

W. B. A. RAMSEY,
July 8th, 1854. *Secretary of State.*

Exhibit No. 3. No. 5744.

THE STATE OF TENNESSEE.

To all to whom these presents shall come, greeting :—

Know ye that in consideration of an entry made in the entry taker's office of the Ocoee District, of No. 5446, 47 dated the 5 day of April 1842, by William Park Lea as General Enterer there is granted by the said of Tennessee to the said William Park Lea and his heirs a certain tract or parcel of land, containing eighty acres, lying in the County of Polk in the said district, situate in the fifth range, east of the basis line, fourth fractional township south and fifteenth section, being the east half of the southwest, and the north half of the northeast quarter of said section: Beginning at the southwest corner of said quarter with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said William Park Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 21 day of August, in the year of our Lord one thousand eight hundred and 42, and of American independence the 67.

By the Governor.

Sig'd JAMES C. JONES.
JOHN L. YOUNG, *Secretary.*

William Park Lea hath title to the above described land. Recorded 18th day of Nov., 1842. J. C. TIPTON,
Register of Ocoee District.

I certify the within to be a true and perfect copy as can be made from the records of my office, to be found in Book J.

JAMES S. BRADFORD,
September 23d, 1854. *Register, &c. of the Ocoee District.*

Exhibit 4 *to Original Bill.*

It appears from the records in my office that the following grants were issued to William Park Lea in the Ocoee District, viz.:—

No. 6758,	for	240	acres,	dated	28th Aug., 1849,	in Polk County.
No. 6773	"	80	acres	"	"	"
No. 7348	"	17	"	25th	May, 1853,	Monroe.
No. 7349	"	26	"	"	"	"
No. 7350	"	65	"	"	"	"
No. 7351	"	57	"	"	"	"
No. 7352	"	108	"	"	"	"
No. 7353	"	21	"	"	"	"
No. 7354	"	24	"	"	"	"
No. 7355	"	80	"	"	"	Hamilton.
No. 7356	"	40	"	"	"	"
No. 7357	"	31	"	"	"	"
No. 7358	"	40	"	"	"	Polk.
No. 7359	"	40	"	"	"	Hamilton.
No. 7360	"	40	"	"	"	Polk.
No. 7361	"	40	"	"	"	"
No. 7362	"	160	"	"	"	Monroe.
No. 7363	"	160	"	"	"	"

W. B. A. RAMSEY,
July 8th, 1854. *Secretary of State.*

Joint Answers of Thomas H. Calloway, Euclid Waterhouse, Samuel Congden, and Lyman W. Gilbert.

The joint and several answers of Thomas H. Calloway, Euclid Waterhouse, Samuel Congden, and Lyman W. Gilbert, to the bill of complaint filed in the Circuit Court of the United States for the District of East Tennessee, at Knoxville, against them and others, and also against the Polk County Copper Company, by William Pinckney Lea as complainant. These respondents now come, and for answer to said bill of complaint answering say they do not admit it to be true that complainant, on the 5th day of April, 1842, entered the eighty acre tract of land described in his said bill the east half of the southwest quarter of section fifteen, fractional township four south and range five east of the basis line in the Ocoee District. Your respondents have no actual personal knowledge of the fact as to whom the entries of this land was made by, but from the written evidences of title, as well as extrinsic circumstances corroborating the same, they verily believe that said land was entered by William Park Lea, and in this connection your respondents beg leave to state, in order that the importance of the fact connected with the title which they are about to state may be at once apparent, that the law disposing of the land in Ocoee District required of the entry taker to keep an entry book in which every entry made shall be entered in the order of time received and so numbered.

Your respondents aver that Luke Lea, the entry taker, kept such a book, that the same is now in existence, and constitutes a part of the record of said entry taker's office; that from the same, in Book B, it appears that William Park Lea, on the 5th day of April, 1842, entered the eighty acres of land in question as a general enterer, at the rate of one cent per acre; said entry book gives the number of each entry, the enterer's name, the number of acres entered, when entered, and what kind of entries; that is, general or occupant enterer. Your respondents further state that by the established usage and course of business in said office, if two or more persons as general enterers tendered locations on the same day for the same piece of land, it was then put up by the entry taker to the highest bidder of those who had tendered locations for the same, and that the one of them who bid the highest price above the price stipulated by the law referred to, was held and deemed by the very terms of the act disposing of the land as the enterer. No one's name was therefore entered in the entry taker's book as the enterer until he was so in fact and law, and the entry in said book is the record evidence of said fact. Your respondents are advised, and so respectfully submit to the hon'l Court, that a location or written description of the land and tendered to the entry taker for entry, was a mere offer to enter the land, and formed no part of the title to the same; but when the proper officer received the same and decided, the same was entered by the entry in the entry book as before herein stated; this clothed the enterer with the equitable title to the land, and entitled him to call upon the entry taker for a certified copy of the entry, not location, and on this certified copy the register of the Ocoee District filled out a grant to be forwarded to the Governor of the State for signature and affixing the seal of the State. These respondents further answering say they have no personal knowledge of the genuineness of complainant's Exhibit No. 1; it is not a certificate of the entry taker that complainant had entered the land described in it, but is a mere location or description on its face of land proposed to be entered by William P. Lea. These respondents, since the filing of complainant's bill, on looking into the entry taker's office, have found a location for the land of which they believe said exhibit to be a true copy; but if said location is genuine, they deny from information and belief that complainant made said location, or that it was made for his benefit, or that said location by having in it the name of William P. Lea meant or intended to describe complainant as the person entering or purporting to enter said land.

These respondents, from information and belief, state that if said location is genuine, that by the name William P. Lea is meant and intended William Park Lea. These respondents further answering state that since the filing of complainant's bill they in connection with others have examined the entry taker's office for the purpose, if possible, to find a certified copy of the entry for the land in question; after an examination of nearly all the certified copies they

could find, they at last discovered one describing the land in question, but it is in the name of William P. Lea; but, as they are informed and believe, is neither in the handwriting of Luke Lea, the entry taker, or either of his sons who assisted him in the discharge of the duties of his office. Your respondents are not able to form a belief as to whether it is the original and genuine one or not. And in this connection respondents beg leave to state to the honorable Court that this certified copy is in a loose and detached piece of paper. And the same may be said of many others that purport to be certified copies of entry, and from the loose manner in which the affairs of the office have been kept at time since Luke Lea ceased to hold it, and from the fact that a portion of the time there was no entry taker, and at the same time the papers were accessible, it would not have been difficult for one so inclined to draw a location or certified copy of entry and substitute others in their stead, and thus cause a variance to appear between the entry on the entry book and the location and certified copy of entry, or rather what would appear to be such from the substituted location and certified copy of entry; but your respondents aver that the name of the enterer on the entry book could not thus be changed without detection. Your respondents, without admitting or denying the genuineness of the certified copy of entry referred to, aver from information and belief that if the same is genuine that by William P. Lea is not meant the complainant, but William Park Lea.

Your respondents further answering deny that a grant for the land in question issued to the complainant, but they aver that it issued to William Park Lea; they have seen and now have the original grant; it is numbered and without any alterations or erasures, as appear plainly on its face 5744, and purports also on its face, without any alterations or erasures of the figures, to be issued on an entry made on the 5th day of April, 1842, No. 5446, for eighty acres alone, being the east half of the quarter section of land herein before described, and conforming to the description of the entry in the entry book of William Park Lea. These respondents, since the filing of complainant's bill, have particularly inspected the register's book of the Ocoee District, and find the number of the entry as is stated by complainant, that is, 5446, 47, and said register's book on its face shows that the grant, besides including the east half of the south side west quarter of land in section fifteen as before herein described, also included the north half of the northeast quarter, &c. It is admitted by the respondents that the 47 and north half, &c., as they verily believe, are additions to the record of the grant and departures from the original, and that the same does not appear in or on the original. These respondents do most positively deny that either of them made or procured those additions or alterations to be made; had they known or been informed of it, they would have endeavored to prevent it; in no event could it have been of any avail to them or either of them under said grant; they neither claim, nor

at any time have they claimed any interest in the additional acres embraced by it; nor, as they are informed and belief, has William Park Lea, now or at any time, had legal or equitable title to the eighty acres of land covered by said additions. They respectfully insist before this honorable Court that their title should not be prejudiced by the additions referred to, the original grant is their muniment of title, is the best evidence, and is free of any such objection. Your respondents further answering say that on the register's book it does seem that the letters *ark* have been added to the capital letter P, and after it was made, that is, the capital letter P, so as to make it read William Park Lea, instead of William P. Lea, as first written. Respondents neither made this alteration or procured it to be made. The same appears on the original grant, and in the same manner; it was in that situation when the grant came into their possession, and neither in the register's book nor in the original grant was it done at their instance or procurement. These respondents believe, and for reasons that will hereafter appear, that the letters *ark* were inserted by the register or some one else, with the purpose of making the grant conform to the entry on the entry book, and to free the grant from any ambiguity that might arise as to what name the capital letter P was intended to designate. These respondents cannot for a moment believe that it was done with any view to depose or throw any cloud on the title of the complainant; for, from facts that will hereafter be stated, it is most evident that complainant never had any title legal or equitable to the eighty acres in dispute, and that no sensible man could or would have apprehended that he would ever pretended to set up one.

Your respondents further answering say they are informed and believe that Luke Lea was a relation of complainant, perhaps a third cousin, that said Luke Lea in 1842, and some years after, was entry taker for the Ocoee District, that complainant lived in adjoining county, and was well known to said Lea. It is true in 1842 Luke Lea had a son, William Park Lea, some seventeen year of age, who resided with him; but, as they are informed and believe, it is untrue that said Luke Lea made entries for his son Park; said Park Lea made entries for himself; the land was at one cent per acre coming to the State; the fees consequent upon the entry were the dues of the entry taker, Luke Lea, and it may be, and these respondents believe the fact so to be, that said Luke Lea charged William Park Lea no fees of office, and it may be furnished the money to pay what was due the State; but the entries were made, as respondents are informed and believe, by William Park Lea, and for himself. Respondents further answering say that a reference to locations entries on the entry taker's book, and certificates of entries in the office of the entry taker of the Ocoee District, will show complainant that he is mistaken in stating that the means adopted by said Luke Lea as entry taker to distinguish the lands of complainant from those of his son William Park Lea was to make the en-

tries for his son in the name of William *Park* Lea, and also to so mark it on the *plan* of the district, and to carry the distinction out in the certificates of entry, and also into the grants, and to show complainant's lands to make the entries in the name of William P. Lea or W. P. Lea, observe it on the *plan*, certificates of entry and grants. These respondents believe and have no doubt of the fact from inspections made before the preparing of this answer, that in some of the entries the above distinctions are observable, and no doubt so made for the purpose of removing any ambiguity as to who was the real enterer of the land; but it is untrue that all these distinctions are observed in Exhibits No. 4 and 3. Complainant in particular appeals to Exhibit No. 2 as showing the grants that have issued to him under the designation of W. P. Lea, as appears from the certificate of the Secretary of State, W. B. A. Ramsey. Now these respondents are informed and believe that a large portion of these grants so designated never issued to complainant for said lands, that he did not enter the same, but the same were entered by William Park Lea, and the grant passed to him by the name of W. P. Lea, or some of them. Your respondents have no personal knowledge of how the fact is, but they are informed and believe that for the lands entered in the Ocoee District, when the register filled up the grants and sent them on for signature and the seal of the State of Tennessee, as before herein stated, the Secretary of State made no record at length of them, but simply noted in a book the number of the grant, name of grantee, or initial letters of No. of acres, and date of grant, and perhaps one or two other items. To show what little reliance as a record of accuracy can be placed on these entries of the Secretary, on Exhibit No. 2 of the bill it is certified that a grant issued to W. P. Lea, No. 5744, for eighty acres of land, dated the 21st of August, 1842; now this description as to number, quantity of acres, and date of grant covers the land in dispute, but the original grant which these respondents have in their possession, and which is hereinbefore alluded to, shows that the grantee was not designated at any time by the name of W. P. Lea on the face, but that at all events it must have issued to W. P. Lea or William Park Lea.

Your respondents having disposed of the alleged distinctions as to William Park Lea and W. P. Lea, or William P. Lea, further answering say that on the 5th day of April, 1842, and for several years after the land in dispute was not of much value, and from information, and so far as they have been able to discover from an examination of the entry taker's office, they verily believe that on the fifth day of April, nor until several days after, did complainant make any entry of land at all in the Ocoee District, either by himself or through others, but it does appear that about the 12th or 15th of April he made some entries of mountain land, and no doubt for grazing purposes, as stated by him, but your respondents here aver that the disputed eighty acres lies some eighteen miles from the land

at any time have they claimed any interest in the additional acres embraced by it; nor, as they are informed and belief, has William Park Lea, now or at any time, had legal or equitable title to the eighty acres of land covered by said additions. They respectfully insist before this honorable Court that their title should not be prejudiced by the additions referred to, the original grant is their muniment of title, is the best evidence, and is free of any such objection. Your respondents further answering say that on the register's book it does seem that the letters *ark* have been added to the capital letter P, and after it was made, that is, the capital letter P, so as to make it read William Park Lea, instead of William P. Lea, as first written. Respondents neither made this alteration or procured it to be made. The same appears on the original grant, and in the same manner; it was in that situation when the grant came into their possession, and neither in the register's book nor in the original grant was it done at their instance or procurement. These respondents believe, and for reasons that will hereafter appear, that the letters *ark* were inserted by the register or some one else, with the purpose of making the grant conform to the entry on the entry book, and to free the grant from any ambiguity that might arise as to what name the capital letter P was intended to designate. These respondents cannot for a moment believe that it was done with any view to depose or throw any cloud on the title of the complainant; for, from facts that will hereafter be stated, it is most evident that complainant never had any title legal or equitable to the eighty acres in dispute, and that no sensible man could or would have apprehended that he would ever pretended to set up one.

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tries for his son in the name of William *Park* Lea, and also to so mark it on the *plan* of the district, and to carry the distinction out in the certificates of entry, and also into the grants, and to show complainant's lands to make the entries in the name of William P. Lea or W. P. Lea, observe it on the *plan*, certificates of entry and grants. These respondents believe and have no doubt of the fact from inspections made before the preparing of this answer, that in some of the entries the above distinctions are observable, and no doubt so made for the purpose of removing any ambiguity as to who was the real enterer of the land; but it is untrue that all these distinctions are observed in Exhibits No. 4 and 3. Complainant in particular appeals to Exhibit No. 2 as showing the grants that have issued to him under the designation of W. P. Lea, as appears from the certificate of the Secretary of State, W. B. A. Ramsey. Now these respondents are informed and believe that a large portion of these grants so designated never issued to complainant for said lands, that he did not enter the same, but the same were entered by William Park Lea, and the grant passed to him by the name of W. P. Lea, or some of them. Your respondents have no personal knowledge of how the fact is, but they are informed and believe that for the lands entered in the Ocoee District, when the register filled up the grants and sent them on for signature and the seal of the State of Tennessee, as before herein stated, the Secretary of State made no record at length of them, but simply noted in a book the number of the grant, name of grantee, or initial letters of No. of acres, and date of grant, and perhaps one or two other items. To show what little reliance as a record of accuracy can be placed on these entries of the Secretary, on Exhibit No. 2 of the bill it is certified that a grant issued to W. P. Lea, No. 5744, for eighty acres of land, dated the 21st of August, 1842; now this description as to number, quantity of acres, and date of grant covers the land in dispute, but the original grant which these respondents have in their possession, and which is hereinbefore alluded to, shows that the grantee was not designated at any time by the name of W. P. Lea on the face, but that at all events it must have issued to W. P. Lea or William Park Lea.

Your respondents having disposed of the alleged distinctions as to William Park Lea and W. P. Lea, or William P. Lea, further answering say that on the 5th day of April, 1842, and for several years after the land in dispute was not of much value, and from information, and so far as they have been able to discover from an examination of the entry taker's office, they verily believe that on the fifth day of April, nor until several days after, did complainant make any entry of land at all in the Ocoee District, either by himself or through others, but it does appear that about the 12th or 15th of April he made some entries of mountain land, and no doubt for grazing purposes, as stated by him, but your respondents here aver that the disputed eighty acres lies some eighteen miles from the land

so entered by him, rugged and heavy mountains intervening between said eighty acres and those tracts. And they also aver that it appears that complainant has not entered or owns lands near to or adjacent to the litigated half quarter of land. Respondents are further informed and believe the fact so to be, that complainant never until a very short time before the filing of his bill of complaint pretended to put up any claim or title to the land in question, never was by himself or tenant in the actual possession of any part of it, though a portion of it has been inclosed and actually possessed and enjoyed, as respondents are informed and believe, some eight years, nor has said land been listed to complainant for taxation, or has complainant ever paid one cent of taxes for the same, as they are informed and believe. Respondents beg leave to state in connection with the above facts so at war with the claim recently set up by the complainant, that he is a close and parsimonious man that knows his own property and holds to it with a tenacious grasp, and would be one of the last men to lose sight even of an inconsiderable entry of land. In the opinion and belief of respondents, complainant is of an inquisitive turn of mind as to what is going on in the way of trade and business employments. And the fact is notorious for several years that great discoveries and developments of copper have been going on in Ducktown *town*, Polk County, where the land contended for is situated, yet so far as respondents have heard, been informed, or believe, complainant's attention has not once been awakened to the fact that at one time he entered land for grazing purposes, as he now asserts, in that section of country, and peradventure the same might contain copper ore. Respondents further answering say from information they believe that complainant continued to reside in the neighborhood, if not at the same place where he did at the time of the entry of the land in question, until about the year 1848, though absent at times. Complainant may have gone to Alabama, and perhaps did at some time after the entry, or rather the date of it, for he is a trading man to some extent, but how long he remained there they have no knowledge or information on which to predicate a belief. It may be that while there he was attacked with fever and ague, and to such extent as to affect the mind and memory of complainant, yet for the last three or four years, and while complainant has been residing at Chattanooga, though your respondents Calloway and Waterhouse were old acquaintances, and have seen him often in the time last mentioned, they have not observed any difference in the mind and memory of complainant, nor did complainant allude to it. These two respondents state that complainant, in their belief, has never been remarkable for his mental acquirements or capacities, but always has in their belief been a lover of money and property; and in sickness and health, so far as his conduct has fell under their observation, or as they are informed and believe, has had mind to know and memory to retain a very distinct and vivid recollection of what he possessed

or owned. Respondents Gilbert's and Congden's acquaintances not being personal, they adopt the answer of their co-respondents Calloway and Waterhouse as to the habits, mind, and capacities of complainant. Your respondents further answering say that the aforesaid William Park Lea, having entered the eighty acres of land in dispute on the 5th day of April, 1842, and procured a grant for the same on the 21st day of August, 1842, did by his regular conveyance in due form of law, sell and convey by said deed of conveyance the said eighty acres of land, and also other lands therein described, to one John Davis, of Polk County, Tennessee, for the consideration of fifty dollars paid by said Davis to said Lea. This deed is dated on the 18th day of June, 1846, and is duly proved and registered in the register's office of Polk County. Your respondents state, as they are informed and believe, that at the date of said sale it was not known to William Park Lea or to the purchaser that said land was valuable on account of the copper ore it contained. It was sold for about the usual prices of mountain land of its quality, at that time being a full, fair, and adequate consideration at the date of sale. Your respondents further answering say that on the seventh day of December, 1852, by deed, the aforesaid John Davis sold and conveyed to Thomas N. Maston, now deceased, John Caldwell, and Alexander H. Keith, forty acres of the eighty acres in dispute, being the southeast corner of said land, and said deed is duly proved and registered in Polk County, and the consideration money of six thousand dollars for said land has been paid to and received by the said John Davis. And your respondents further answering state that Alexander H. Keith, John Caldwell, and the widow and heirs-at-law of Thomas W. Mastin, deceased, have sold said forty acres last above mentioned out of the eighty in dispute to the respondents Calloway and Samuel Congden and Lyman Gilbert. As evidenced by the memorandums of agreement for purchase, this purchase was made about the 6th of April, 1854. The respondent Euclid Waterhouse is interested in said purchase with Thomas H. Calloway, though his name does not appear in the written evidence. And Alexander H. Keith is also interested in said purchase to the extent of one-fifth, though his name does not appear in that character; that is, as a purchaser of part of the interest in said property in the written evidence of purchase. Your respondents Calloway, Samuel Congden, Lyman W. Gilbert, and Euclid Waterhouse, made large and heavy payments towards the satisfaction of the money agreed to be given for said land, they have also paid large sums of money towards forcing said property from any cloud, doubt, or question that might be raised as to the title, preferring to do this and thus buy their peace, rather than have any question as to the validity of their title mooted and canvassed to the prejudice of the sale of the land or impairing of its value. Respondents state that Samuel Congden, Lyman W. Gilbert, A. H. Keith, and Thomas H. Calloway own the Polk County Copper Company; the respondent Euclid Waterhouse has one-half of the

interest of said Calloway by understanding and agreement between them; they constitute the Polk County Copper Company. This corporation is created by an act of the Legislature of Tennessee; said company have title to the forty acres of land, being the south-east corner of the eighty acre tract, or have a right, on the terms of the purchase being in all things complied with, to call for the entire legal estate, and to have regular conveyances to the property. Respondents state that the sale of the interest of the widow and heirs of Thomas W. Maston, deceased, was under the direction and received the sanction of the honl. Court of Chancery held for the State of Tennessee in the 5th Chancery District at Athens, and *and* by the decree of said Court title is vested in the Polk County Copper Company, on the payment of the sum stipulated to be paid to the widow, heirs, and representatives of Thomas W. Maston, deceased, or to their interest. These respondents further answering state that the Polk County Copper Company have no interest, neither has respondent Calloway and Waterhouse, in the other part of the eighty acres in dispute, being the forty acres out of said eighty, situate in the northeast forty of the southwest quarter of land before herein described. Your respondents state, as they are informed and believe, this last mentioned forty acres of land, the northeastern forty acres of the quarter was conveyed by the before mentioned John Davis to one Henry Young, of the city and State of New York, for the sum of twenty-five thousand dollars, and the deed of John Davis to said Young has been proved, as required by the laws of Tennessee, and duly registered in Polk County. These respondents state that said Young has conveyed the forty acres of land last described to Charles Congden and the respondent Lyman W. Gilbert, as trustees for Mary's Mining Company of Polk County, Tennessee, by deed duly executed, and by memoranda. Respondents not having the deed now present, has been, respondent Samuel Congden states, duly proved and registered in Polk County.

Now, your respondents state and aver to your honor, that William Park Lea, from the issue of his grant for the 80 acres of land in question claimed and exercised ownership over the same down to the time of his sale to John Davis; they have never heard or been informed, or do they believe that his right as owner was called in question. John Davis went into the actual possession of said eighty acres of land so as aforesaid conveyed by William Park Lea to him, and a portion of said eighty acres was actually inclosed, the portion so inclosed extending on and over part of each of the two forty acre tracts or pieces specially before herein described as constituting the eighty acres called in question. Said possession was taken as owner in fee under said deed, and hostile and adverse to all and every other claim or title to said eighty acres, and so held by the said John Davis and those coming in under him for a period over seven continued and consecutive years, before the bringing of complainant's action of ejectment at law or filing his bill of complaint in this

honl. Court. And these respondents rely on the statute of limitations of seven years of the State of Tennessee in such cases made and provided, and beg leave to have the benefit of the same by way of answer in as full and ample a manner as if formerly plead by them in bar to all the relief prayed by complainants touching the said eighty acres of land and every part of it.

And these respondents further answering say that if complainant, in point of fact and law, has any general equity against any one, as disclosed in his said bill of complaint, that as against these respondents he can have no relief in this honorable Court, because, as they aver, the before-mentioned John Davis purchased said eighty acres of land for a full, fair, and valuable consideration, as hereinbefore specially stated, paid said consideration, took a conveyance in fee simple for the same, and all which was had and done without any notice of complainant's alleged equities. These respondents also aver that the before stated Caldwell, Keith, and Maston purchased from said John Davis, for the valuable consideration of six thousand dollars, the forty acres of said disputed eighty, as before herein particularly stated, and paid said sum to him, and took a deed in fee simple for the said forty acres, and all without any notice of complainant's alleged equities to any part of said eighty acres.

And the respondent Samuel Congden, in particular, and the other respondents, from information and belief aver that the aforementioned Henry Young purchased the forty acres, the northeastern forty of the eighty acres in dispute hereinbefore specially described, for the valuable consideration of twenty-five thousand dollars, and paid the same to those entitled thereto, and took a deed in fee simple from the said John Davis, who held the legal title, and all without any notice of complainant's alleged equities. And all these respondents aver that the other purchases made, moneys paid, and conveyances taken as in this answer before stated, were done and made, all of them, without any notice of complainant's alleged equities. And these respondents therefore insist before this honorable Court that they, and those from whom they derive title and claim, as before herein stated, are purchasers for a valuable consideration, *bona fide*, and without notice of complainant's alleged equities, and as against such purchasers complainant is entitled to no relief; and these respondents here set up such defence of being *bona fide* purchasers for a valuable consideration without notice, by way of answer instead of plea, and pray the same protection that they would be entitled to if such defence was set up and relied on by plea formerly pleaded.

These respondents further answering state that it is untrue that John Hambright, as the agent of William Park Lea, conveyed the eighty acres of land in question to John Davis. But respondents state that William Park Lea did, as appears by power of attorney duly registered in Polk County on the 29th day of July, 1853, appoint John Hambright his agent or attorney in fact for certain pur-

poses therein stated; but it is untrue that said William Park Lea was a minor at the time of appointing said Hambright his agent, but was at that time, as they are informed and believe, some twenty-six or twenty-seven years of age. It is true that in the year 1853 William Park Lea instituted suit a *suit* against Caldwell, Keith, and Mastin, setting up claim to said land, but not on the ground either that at the time of making Hambright his agent he was a minor, or at the time of the alleged sale of Hambright to Davis, as they are informed and believe.

It is untrue that during the progress of this suit it was first discovered that the copper mine on said land was one of the most valuable in Ducktown, but, to the reverse, it was known long before the institution of the suit. These respondents had become interested in said property, and it was part of their contract with Caldwell, Keith, and others that they should quit the claim of William Park Lea, and accordingly they succeeding in getting him to relinquish all claim and execute a quit claim deed for the sum of thirteen thousand dollars, which was to quit the title of the land in dispute as well as to other lands. Ten thousand dollars was for the forty acre tract sold to the Polk County Copper Company, as hereinbefore stated. After they had agreed on this definitely, and before said money was paid on the conveyance made, Francis W. Lea asserted that he had an older and better title, and they were threatened with the same. Seeing the situation they were in, not believing that said Francis W. Lea really had any valid claim, but knowing that scarcely any copper ore had ever been struck in Ducktown without suits directly springing up out of some pretended adverse title, and wishing to guard against any such contingencies, the deed was drawn in substance with the claim complained of against their title being questioned. But these respondents here aver that this was not done from any fear, doubt, or apprehension of complainant's claim, for at that time they neither knew nor had been informed of it. Respondent Thomas H. Calloway says it is untrue that he *was* in the institution and conduct of said suit, either as the principal or sole actor and agent of William Park Lea. These respondents further answering say that it is untrue that during the time of the suit that complainant was living at any great distance from the land; he was for several years before and during the pending of said suit a resident and citizen of Chattanooga, Tennessee; between that place and Ducktown there were many persons passing and repassing, connected or concerned in the copper business in Ducktown or its vicinity, and the copper observations and discoveries in that region of country were themes of daily conversation in Chattanooga, as these respondents are informed and believe. These respondents further answering state that they have no knowledge or information on which to predicate a belief as to the matters complained of against Alfred D. Taylor, but verily believe said Taylor, complainant, and others have a full understanding, and that this bill is one filed on

speculation, and with a view to force respondents to give largely to buy their peace. Respondents further answering say it may be that complainant has never seen the original grant to the land in question, but not for the reason he seems to give, that Luke Lea was to attend to the perfecting of his titles; they do not believe that any such arrangement was made between complainant and Luke Lea, or that he left money with Luke Lea to pay the register's and Secretary of State's fees for his grants. And they are constrained to believe that this is a mere device of compliment to account for his never having had the grant for land which he now unjustly set up a claim for.

These respondents further answering state that the Polk County Copper Company are engaged in raising ore from the mine on said land and disposing of the same. Said land is chiefly valuable for its copper ore, was purchased for mining purposes, and has been so used.

And your respondent Calloway, in answer to the special statements against him, says it is true that he married a daughter of Luke Lea, but it is untrue that Luke Lea entered land for his son, William Park Lea; but the lands entered by said William Park Lea were entered in the way before stated by said William Park Lea for himself. It is untrue that respondents had any knowledge or information that said Luke Lea, in entering lands for his son Park, used the name of William Park Lea in the entry and on the plan of the district to distinguish them from complainant's entries. And these respondents all here state and aver that no such distinction is observed and carried out uniformly in the entries, location, plan of the district, or in the grants; in some cases the entries of land owned by William Park Lea, and sold by him, and the title never called in question to this day, are in the name of William P. Lea, and grants in the same way, and deeds, made by said Lea to land under the same signature. On the plan of the district some of said William Park Lea's lands are set down W. P. Lea, in other cases Wm. P. Lea; in some cases either the location or certificate of entry on name in the plan of the district of William Park Lea's entries are set down William P. Lea, or W. P. Lea, William P. Lea, and William Park Lea. Respondents have examined the entry taker's office, and they believe that all these various differences and others will be found. The truth is, they are informed and believe, that complainant was but a limited enterer of land, and there was no necessity of such distinction being made as he alleges; the bulk of complainant's entire entry, as they are informed and believe, was some six or seven quarter sections of land, all near to each other, and mostly, if not entirely, for grazing, and at a distance from the land in dispute before herein stated, except one entry, as they are informed, in a different section, and about some ten miles from the land in question. Respondents further answering state that an examination of the book and papers in the entry taker's office will

show that in relation to other land various alterations have been made in either the certificates of entry or locations for land, as well as in the grants, as appears in the register's books; and whether said alterations were made at the time of filling them up, and before the paper was complete, these respondents cannot say, and is only mentioned here to repel the idea that in complainant's particular case any fraud was meditated or committed. Respondents will further state, as they are informed and believe, that in numerous cases after grants were filled up they would lay for weeks in the register's office for the owner to call for them, or awaiting opportunity to have them sent to Nashville for the seal of the State and the signature of the governor. When the additions to the grant which respondents have hereinbefore specially set out and admitted were made, they are enabled to state in all probability they were made just before sending the grant filled up to Nashville for completion; but whenever made or by whom these respondents believe, as is hereinbefore stated, they were made in good faith, and to show on the face of the grant itself, without resorting to proof, who was the real owner of the land, and that William Park Lea was the genuine and proper grantee.

The respondent Thomas H. Calloway denies that he had any knowledge, information, or belief that complainant had any claim or title to the land before the compromise of the suit of William Park Lea, before referred to. And these respondents all deny that they had any such knowledge, information, or belief, and they further deny that such knowledge, information, or belief was the reason of the compromise of William Park Lea's suit for the sum stated, or for the language of said Lea's deed, or for the fact of the further payment to him being on condition that the title was not to be questioned.

The respondent Calloway can safely say he was influenced in some degree to buy off William Park Lea's claim from consideration, he greatly fears, complainant will ever remain a stranger to. But be the motives of the said Lea what they may have been for compromising said suit, and taking the sum stated in satisfaction of his claim, these respondents positively deny that complainant's alleged title had any influence on them in making said compromise, or had anything to do with its terms. Respondents neither knew, had been informed, or believe such a claim was in existence. Respondent then believed, and now believes, that William Park Lea had entered, owned, and had a grant for said land, that he had sold the land to John Davis, and that said Davis had resold, as is all hereinbefore stated.

Respondents had become interested in said property, it was valuable, and it was considered advisable to make the most advantageous *to* purchase and to eject the only claim that they then believed and now believe had any colorable existence, and all which was done, as

before stated, without knowledge, information, or belief of complainant's alleged equities.

Respondents further answering state that as to the possession of the original grant they are informed and believe that, on the purchase of the land by Keith, Caldwell, and Maston, said grant was handed over by the vender, John Davis, to them, and since then has been in their possession and that of respondents, first one and then another. It is in the same condition now that it was when these respondents first seen it, which was after the purchase made by Caldwell, Keith, and Maston.

These respondents will file copies of the title papers named, or the original, as ordered by the honorable Court, but respondents respectfully insist that on the matters of the bill, and this answer and its defences, complainant has in law, if objected to, no right to inspection or production of the same.

These respondents, now having fully answered, pray that complainant's prayer for an injunction be refused, and if now granted, that said injunction be dissolved, and his said bill be dismissed, and they have discharged with their reasonable costs, &c. &c.

THOMAS H. CALLOWAY,
SAMUEL CONGDEN,
EUCLID WATERHOUSE.
GEO. W. ROWLES,
Solicitor for Respondents.

STATE OF TENNESSEE,
Bradley County.

This 24th day of October, 1854, personally appeared before me, John C. Gant, one of the Judges of the Circuit Court of the State of Tennessee, Thomas H. Calloway, Euclid Waterhouse, and Samuel Congden, and made oath in due form of law that the facts stated in *in* their foregoing answer, when stated as of their own knowledge, are true, and when stated on information belief they believe them to be so.

THOMAS H. CALLOWAY,
SAMUEL CONGDEN,
EUCLID WATERHOUSE.

Sworn to and subscribed before me the day and date above written.

JOHN C. GANT,
Judge of the 3d Judicial Circuit of the State of Tennessee.

STATE OF TENNESSEE,
Knox County, Eastern District of Tennessee.

This day personally appeared before me, William C. Kain, a Notary Public for the County and State aforesaid, Lyman W. Gilbert, who, being by me first duly sworn, saith that the facts stated in the foregoing answer as of his own knowledge are true, with the exception that this deponent did not personally inspect the records of the register's office of the Ocoee District, but believes the other respond-

show that in relation to other land various alterations have been made in either the certificates of entry or locations for land, as well as in the grants, as appears in the register's books; and whether said alterations were made at the time of filling them up, and before the paper was complete, these respondents cannot say, and is only mentioned here to repel the idea that in complainant's particular case any fraud was meditated or committed. Respondents will further state, as they are informed and believe, that in numerous cases after grants were filled up they would lay for weeks in the register's office for the owner to call for them, or awaiting opportunity to have them sent to Nashville for the seal of the State and the signature of the governor. When the additions to the grant which respondents have hereinbefore specially set out and admitted were made, they are enabled to state in all probability they were made just before sending the grant filled up to Nashville for completion; but whenever made or by whom these respondents believe, as is hereinbefore stated, they were made in good faith, and to show on the face of the grant itself, without resorting to proof, who was the real owner of the land, and that William Park Lea was the genuine and proper grantee.

The respondent Thomas H. Calloway denies that he had any knowledge, information, or belief that complainant had any claim or title to the land before the compromise of the suit of William Park Lea, before referred to. And these respondents all deny that they had any such knowledge, information, or belief, and they further deny that such knowledge, information, or belief was the reason of the compromise of William Park Lea's suit for the sum stated, or for the language of said Lea's deed, or for the fact of the further payment to him being on condition that the title was not to be questioned.

The respondent Calloway can safely say he was influenced in some degree to buy off William Park Lea's claim from consideration, he greatly fears, complainant will ever remain a stranger to. But be the motives of the said Lea what they may have been for compromising said suit, and taking the sum stated in satisfaction of his claim, these respondents positively deny that complainant's alleged title had any influence on them in making said compromise, or had anything to do with its terms. Respondents neither knew, had been informed, or believe such a claim was in existence. Respondent then believed, and now believes, that William Park Lea had entered, owned, and had a grant for said land, that he had sold the land to John Davis, and that said Davis had resold, as is all hereinbefore stated.

Respondents had become interested in said property, it was valuable, and it was considered advisable to make the most advantageous *to* purchase and to eject the only claim that they then believed and now believe had any colorable existence, and all which was done, as

before stated, without knowledge, information, or belief of complainant's alleged equities.

Respondents further answering state that as to the possession of the original grant they are informed and believe that, on the purchase of the land by Keith, Caldwell, and Maston, said grant was handed over by the vender, John Davis, to them, and since then has been in their possession and that of respondents, first one and then another. It is in the same condition now that it was when these respondents first seen it, which was after the purchase made by Caldwell, Keith, and Maston.

These respondents will file copies of the title papers named, or the original, as ordered by the honorable Court, but respondents respectfully insist that on the matters of the bill, and this answer and its defences, complainant has in law, if objected to, no right to inspection or production of the same.

These respondents, now having fully answered, pray that complainant's prayer for an injunction be refused, and if now granted, that said injunction be dissolved, and his said bill be dismissed, and they have discharged with their reasonable costs, &c. &c.

THOMAS H. CALLOWAY,
SAMUEL CONGDEN,
EUCLID WATERHOUSE.
GEO. W. ROWLES,
Solicitor for Respondents.

STATE OF TENNESSEE,
Bradley County.

This 24th day of October, 1854, personally appeared before me, John C. Gant, one of the Judges of the Circuit Court of the State of Tennessee, Thomas H. Calloway, Euclid Waterhouse, and Samuel Congden, and made oath in due form of law that the facts stated in *in* their foregoing answer, when stated as of their own knowledge, are true, and when stated on information belief they believe them to be so.

THOMAS H. CALLOWAY,
SAMUEL CONGDEN,
EUCLID WATERHOUSE.

Sworn to and subscribed before me the day and date above written.

JOHN C. GANT,
Judge of the 3d Judicial Circuit of the State of Tennessee.

STATE OF TENNESSEE,
Knox County, Eastern District of Tennessee.

This day personally appeared before me, William C. Kain, a Notary Public for the County and State aforesaid, Lyman W. Gilbert, who, being by me first duly sworn, saith that the facts stated in the foregoing answer as of his own knowledge are true, with the exception that this deponent did not personally inspect the records of the register's office of the Ocoee District, but believes the other respond-

ents did, and that their statements in that regard are true, and the facts stated on information this respondent believes to be true.

LYMAN W. GILBERT.

Sworn to and subscribed before me this 9th day of December, 1854. W. C. KAIN,

Notary Public, Knox Co., Tenn.

Notary fee paid Lyman W. Gilbert $1 00. W. C. KAIN.

The separate answer of John Caldwell, of Jefferson County, Tennessee, to the bill of complaint filed by William Pinckney Lea against the Polk County Copper Company, a corporation chartered by the State Tennessee, and all the corporators and stockholders of the Co. against Samuel Congden, Charles Congden, Thomas H. Calloway, Euclid Waterhouse, Alexander H. Keith, the widow and heirs of Thomas W. Maston, dec'd, and this respondent, together with Charles Burnese and various others, in the Circuit Court of the United States for the District of East Tennessee, at Knoxville.

This respondent saving and reserving to himself, as he may save and reserve, the usual benefit of exceptions, &c., to complainant's said bill for answer thereto, or so much thereof as he is advised and believes it is material for him to respond to, answers and says, that from all the knowledge and information he has he does not believe it to be true, and hence denies the fact that on the 5th day of April, 1842, or on any other day, said complainant entered either as general enterer or otherwise, in the office of the *entry taker* of the Ocoee District, the tract of land as stated in his said bill, and being the east half of the southwest quarter of section fifteen for township four and range 5 east of the basis line in the Ocoee District, nor does this respondent believe, and from information he denies that said complainant made either the entry in question or any other entry of land in the entry taker's office of the Ocoee District on said 5th day of April, 1842. Nor does this respondent believe, and hence denies, that any entry or location of said land was handed by complainant to the said entry taker of the Ocoee District, either on said fifth day of April, 1842, or at any other time.

Respondent has examined the entry taker's office of said Ocoee District, and finds a paper purporting to be an office paper and a location of said land, of which Exhibit No. 1 to complainant's bill is a copy, but said paper is neither in the handwriting of complainant nor of the entry taker of said district, as respondent is informed and believes, and whether the same is genuine respondent does not know, nor is it material for him to inquire, as he is advised and believes. It is true said paper purports to be a location of said land in the name of *William P. Lea*, but that it was the location or entry of complainant, or that any such particularity of discrimination was adopted and kept up by the entry taker of said Ocoee District to designate the entries of compl't from those of William Park Lea, as *comp't* has stated in his bill, this respondent, from what he considers

the best and most reliable information, wholly denies, and will be more fully stated and shown in the progress of this answer. Respondent also denies, upon facts and circumstances which will be more fully stated hereafter, that a grant for said land ever was issued to complainant either on the 21st day of August, 1842, or at any other time, but admits that on said 21st day of August, 1842, a grant was issued for said land, which said original grant is numbered 5744, and, as recited in said grant, was issued upon entry No. 5446, and, as appears from the face of said original grant, was not issued to any one by the style of "W. P. Lea," as complainant alleges in his bill; but, as appears from the face of said grant, the same was issued either in the name of William P. Lea or William Park Lea

grant is now and was the first time this respondent ever saw it (which was in the year 1849) in the name of William Park Lea. It is also true that said grant appears to have been originally filled up with the name of William P. Lea, and the letters "ark" appear to have been added after said grant was filled out; but whether said corrections were made before or after the *issuance* of said grant this respondent of his own knowledge does not know. The same correction or interlineation of the letters "ark" after the "P" also appears in the registration of said grant in the entry taker's office of said Ocoee District, but said interlineations or corrections appear, as respondent is fully satisfied from inspecting the same, to have been done by the same pen, with the same ink, and in the same handwriting of the balance of the filling up of said registration, and is in the handwriting of register of said Ocoee District, as respondent is informed and believes. Respondent will here further state that in the register's books of said Ocoee District, where said grant is registered, the figures "47" after the figures "5446," and the words "and north half of the northeast" after the words "east half of the southwest," appear in said registration, and are clearly and indubitably in a different hand and in different ink from that in which said grant was originally entered, and must have been written by a different person at a different time from said registration, and this respondent happens to know that the same has been done recently, as he had occasion to examine said books about one year ago, and said figures and words were not then in said registration of said grant, but by whom they were inserted or for what purpose respondent is at a loss to conjecture, and so respondent denies that the letters "ark" after the letter P in the registration of said grant is in a different hand, in different ink, and not written by the register of said district; but respondent will state all the information and belief that he has upon the subject in the proper connection in this answer.

Respondent further answering states that he is fully convinced, and has every reason to believe, that said 80 acres of land now claimed by complainant in his bill were entered *bona fide* by William Park Lea, that said grant was regularly issued to him, and came rightfully into his possession, and that he justly claimed and exer-

cised acts of ownership over the same until he sold and conveyed it, and that those claiming under him are the just and rightful owners of said land, and that the claim now set up to the same by complainant is a pretended fabrication contrived in fraud and set up on speculation, in order and for the sole purpose of levying or extorting money from the true owners of said land, in order to quiet the possession of the same, as it has now become immensely valuable, and complainant well knows that lawsuits, particularly by insolvent and irresponsible persons, upon such property as that now in question, are annoying and vexatious to the owners, and often induces them to payment money unjustly rather than be annoyed and hindered in their operations by them. Respondents will now state that in the entering of land in the Ocoee District the first record made of an entry of land by the entry taker was in a note or memorandum book kept by him for that purpose, in which was written at the time. An entry was made, the number of the entry, the name of the enterer, the No. of acres entered, the date of the entry, the kind of entry, and at what price entered; in which book the entry of the land in question by entry No. 5446 is written at large and in full in a bold, free hand, without any alteration or interlineation, the name of the enterer, "William Park Lea," and no entry of lands that has ever been owned, or pretended to have been claimed by complainant, until his late pretended claim to the lands in dispute, appears to have been entered on said 5th day of April, 1842. Respondent will further state that said William Park Lea was often called, and will answer by the name of, "Park" Lea, as well by the deputies who wrote in the entry taker's office as his father, the entry taker, and as appears from inspecting the books in said office his name is often indiscriminately written William P. Lea or William Park Lea. In numerous instances of lands that he was known to claim, control, and exercise acts of ownership over, and finally sold and disposed of, and which have never been claimed or pretended to be claimed by complainant, in the original location his name is written William P. Lea, and in the certificate of entry and grant it appears William Park Lea, and in other entries of the same kind his name appearing as William Park Lea in the location and certificate of entry and William P. Lea in the grant, and hence this respondent insists that, as shown from the books of said entry taker's and register's offices, no such discrimination has been regularly kept up, as is set forth in complainant's bill. Although it may have been, and as respondent has been informed was at one time attempted, in a manner which he will hereafter state, yet it never was kept up with any sufficient accuracy to afford any reasonable or reliable presumption, much less evidence, upon which to settle or adjudicate the rights of parties. Respondent further states that he has not had access to the books and records kept by the Secretary of State at Nashville, and hence can neither admit or deny the correctness or accuracy of Exhibit No. 2 to complainant's bill, but from inspection of the books of the

entry taker and register of the Ocoee District at Cleveland, Tenn., several of the tracts of land stated in said exhibit as having been granted to W. P. Lea are shown by said books of said entry taker and register to have been granted to William Park Lea, and as respondent is informed and believes, have always been owned, claimed, and known as the lands of William Park Lea, until they were finally sold and disposed of by him, and no claim or title to the same has ever been set up by compl't, Wm. *Pinckney* Lea. Respondent will further state as further evidence that the land in dispute was entered by and granted to William Park Lea, and not to complainant, that said land is in the immediate neighborhood and same locality with divers other lands that were entered, claimed, owned, and disposed of by William Park Lea, and that complainant never did enter, claim, or own any other tract or foot of land in the same section of country, or within nearer than 8 or 10 miles of the land in dispute. Respondents will further state that at the date of said entry, April 5th, 1842, and for a number of years afterwards, said complainant lived and resided upon a farm on Hiwassee River, then in possession of his brother, some twenty-five miles distant, through a rugged and pathless mountain, from the lands now in dispute, and although he did enter some lands for grazing purposes, as respondent is informed, yet he entered no lands for that or any other purpose in the region known as Ducktown; but, on the contrary, the farm where complainant lived was immediately adjoining the mountains, and the lands entered by complainant for "grazing purposes" were much nearer home, in a more accessible locality, and in a different section of country, and none of said entries nearer the land in dispute than 18 or 20 miles, except perhaps one, which is from 8 to 10 miles distant, as respondent is informed and believes; and although, as respondent is informed, said complainant did drive cattle to the mountains and graze them upon the lands entered by him, yet he never did drive or graze any cattle or other stock upon or near or within less than eight or ten miles of the land now in dispute.

As to the time and manner of complainant's entering the land which he really did enter for "grazing purposes," respondent of his own knowledge knows nothing, but is informed and believes that on said fifth day of April, 1842, complainant, in company with a neighbor of his, came to Cleveland for the purpose of entering some mountain land, but upon inspection of his intended locations and consultation with his friend, he found that he had not his locations properly made out, and for that reason declined making any entries upon that day, and returned home without having made a single entry; and after having gotten his locations properly arranged to suit him, returned again on the 15th of April and made his entries, which are the first and only real entries made by complainant after the reduction of the lands in said Ocoee District to one cent per acre, as respondent is informed and believes. And from inspection of the books of said entry taker will show the fact that on said 15th

day of April, 1842, a number of entries were made in the name of William P. Lea, and also a number in the name of William Park Lea; and said books also show the fact in carrying out and perfecting said entries some of those entered by William Park Lea have been filled out in the name of Wm. P. Lea, and the words "ark" interlined in the same manner as in the grant in question, and also some of those entered in the name of William P. Lea have been filled out with the name of William Park Lea, and the words "ark" erased out after the P. And this respondent will here state what he has understood and believes to be the real cause of the erasures and interlineations, as well those in the grant in question as those of the 15th of April.

Which is simply this, as respondent is informed and believes, that after said 15th day of April 1842, when said complainant made his entries and the grants had been filled up in the indiscriminate manner aforesaid, complainant and the said William Park Lea, saw that their titles were getting confused, and they went together to the Register of the Ocoee District, took their grants and designated the lands which each had entered, and requested said register to correct them accordingly, and by their joint request and in the presence of both, the register of said district did take their grants and made the corrections required by them, that is, where an entry of William Pinckney Lea had been filled up in the grant with the name of William Park Lea, the letters "ark" were erased by the register from said grant and registration, and when an entry of William Park Lea had been filled up in the grant with the name of William P. Lea, the letters "ark" were added or inserted by the register after the "P" and the grants thus altered mutually delivered to each, and hence has resulted, as respondent verily believes, all the difficulty about the letters "ark" being interlined in said grant, and which is simply an after thought hatched up for sinister purposes after copper ore had been discovered upon said land, and it had become of great value, and thus said grant was delivered to and came into the possession of said William Park Lea, who held said land under it always claimed it, exercised acts of ownership over it until the year 1846, when he sold and conveyed it by deed in fee simple to John Davis, as will appear by reference to a copy of said deed herewith filed, marked exhibit (A), and made part of this answer. The original shall be produced upon the hearing of this cause, or whenever called for by the honorable court, and respondent will here state that as he is informed some arrangement or agreement between complainant and William Park Lea as to the designation of their titles was made between themselves and in the manner above stated, which was long after the location and entry of the land in dispute, and was frequently neglected or omitted afterwards by the officers of said Entry Taker's and Register's offices, and will readily appear by inspection of the books of said offices.

Respondent further answering, states that in the year 1848 he

made his first visit to Ducktown for the purpose of exploring for copper, discoveries having been made of that mineral in that section, as respondent had learned, as early as the year 1843 or '4. On his way he stayed all night at the house of complainant's brother on Hiwassee River, in Polk County, where complainant had lived from before the date of said entry in 1842, until that time, and was still residing there as respondent is informed and believes, and respondent lodged in the same room with complainant at the house of his brother, and during the evening and night urged complainant to go with him to Ducktown in search of copper which complainant declined to do, stating to respondent that he had never been to that section of country, but that he understood it was a wild rough place, and he had no disposition to go there; the next morning complainant went with respondent some three or four miles, and showed respondent where he had entered some mountain land which he said was valuable because it was near the farm of his brother on the river, and which he, compl't, had entered on account of timber, and for the purpose of grazing stock, but compl't never once intimated that he had entered or ever claimed a single foot of land in Ducktown; but on the contrary, stated to respondent that he had never been in that section of country, and this was at least four years after it was publicly known and generally talked of through the country, that copper ore had been discovered in Ducktown, and after some thirty or forty tons of the copper ore had actually been taken out of a mine in that country.

Upon his arrival at Ducktown, respondent became satisfied in his own mind upon examination of the country, that it contained valuable mines of copper, and commenced his operations and negotiations for the purpose of securing and developing the same. During his exploration of that country he examined the lands now in dispute, and in 1849 effected a negotiation with the then owner of them, John Davis, which caused respondent to look into the titles, and said Davis, among other title papers for other lands included in said negotiation, produced and showed to respondent the original grant to the land in question, and the deed of conveyance from said William Park Lea before referred to, and a copy of which, marked (A), is exhibited to this answer.

Said grant and deed were then precisely as they are now, with the exception that said deed had not then been registered. Said negotiation was a lease of said lands from the said Davis on behalf of respondent and other parties, for whom respondent was acting, in the State of New York, and said lease having been forfeited by reason of said parties in New York having failed to comply on their part with the terms of the same, this respondent then commenced negotiating with said John Davis for the purchase of said land, together with a large amount of other lands adjoining the same, which were owned by the said Davis; and respondent having associated with him in said negotiation his co-respondent, Alexander H. Keith and Thomas W. Mastin, dec'd, on the day of 1852, they

effected a purchase of forty acres of the land now claimed by complainant, being the southeast corner of the southwest quarter of said section fifteen, together with a large amount of other lands. And on the seventh day of December, 1842, the said John Davis conveyed said lands by deed in fee simple to respondent and his said co-respondent Keith and s'd Thomas W. Maston, dec'd, a copy of which said deed is herewith exhibited, marked (B), and made part of this answer.

Immediately after having effected said purchase, this respondent and his said co-purchasers entered upon said land and commenced testing the same, and shortly afterwards opened and developed upon the land in question a rich and extensive vein of copper, which proved to be of great value, and commenced working the same. Shortly after which time the said William Park Lea, either by himself or through his agent, John Hambright, commenced an action of ejectment against this respondent and said Keith, the said Mastin having died before that time, and those in possession of the same for said forty acres in question, and other lands not claimed by complainant, in the Circuit Court of Polk County, Tennessee, which said action of ejectment commenced in 1853, was the first agency that respondent ever knew of the said Hambright or any other person having for the said William Park Lea in relation to the land in dispute, and hence respondent denies that said Hambright sold or conveyed said land to said John Davis as the agent of said Park Lea, or as the agent of any body else. But respondent avers that said Park Lea sold and conveyed said land to said Davis in proper person, and said deed and signature thereto by the description of William P. Lea, are all in the proper handwriting of the said Park Lea. So far as respondent ever could learn, the grounds upon which said action of ejectment was pretended to be predicated, was that said Park Lea was alleged to have been a minor at the time said deed was executed, and also it was alleged that said deed was executed by H. W. Lea, the brother of said Park, but as said cause never came to a hearing, respondent cannot state the grounds of said action further than he collected the same from rumor and report; but respondent always felt fully satisfied and assured that said action was brought without any just or substantial grounds, and solely for the purpose, as he as fully believes this action is brought of extracting money to quiet the possession, knowing that the *the* value of said lands had been so much enhanced by the discovery of so rich a mine of copper ore that the owners could afford, if they chose, to pay a large sum for the purpose of quieting pretended claims, and still realize large profits from the property. And respondent will here state that such was the general belief, so far as he knew the sentiments of the country; and that which this respondent deems worthy of remark is, that in a conversation which he had with William Pinckney Lea, the present complainant during the pendency of said action of ejectment, complainant stated to respondent that he, com-

pl't, had no doubt that Park Lea had acted the dog, for that he, complainant, was fully satisfied that said Park Lea had sold and conveyed the land now in dispute, as he, Park Lea, had sold most if not all the lands that he, said Park Lea, had entered in the Ocoee District, and that he, complainant, was fully satisfied that said suit was gotten up solely for the purpose of scaring money out of respondents, and his joint purchasers of said land. Hence, it will be seen that as late as the year 1853, the complainant had not come sufficiently to his recollection to set up any claim or title to said land; but was fully of the belief that said Park Lea had owned and sold the same, and was then acting the *dog*, in trying to extract money on a false claim, and how far said complainant has been encouraged to attempt the same sort of game by the report of his success, this respondent cannot undertake to determine. Respondent further answering, says that it is true that during the pendency of said action of ejectment, and about the 6th day of April 1854, this respondent together with his co-respondents, Keith and said widow of Thomas W. Mastin, dec'd, acting for herself and the minor heirs of said Thomas W. Mastin and John J. Mastin, who was then of full age, negotiated a sale of their respective interests in said land, that is, this respondent and said Keith each one undivided third, and said widow and heirs of said Thomas W. Mastin, one undivided third of the said forty acres of the land now in dispute, hereinbefore designated, together with other lands to persons who, upon the said *said* stipulations of said contract being agreed upon, formed themselves, together with others not known as purchasing parties closing said negotiation, into a company under a charter granted by the State of Tennessee, to some of the parties by the style of the Polk County Copper Company, and the memorandums of said sale were executed to said Polk County Copper Company in its corporate capacity. Respondents will further state that the parties with whom said negotiations was affected, and known to respondent as purchasers in said negotiation, were Samuel Congden, Lyman W. Gilbert of the State of New York, and Thomas H. Calloway; but upon said purchasers forming themselves into a corporation, respondent learned that Charles Congden, Euclid Waterhouse, and Alexander H. Keith, additions to the purchasers above named, were the real parties for whose benefit said purchase was effected; respondent did not sell said property on account of any serious apprehension as to the result of said action of ejectment, but owing to other causes not deemed necessary here to state, he was willing and did dispose of said property. Said purchasing party did take said property, subject to said pretended claim of said Park Lea, and other specific incumbrances; but as to what arrangement they made with him they can best answer. Said suit was subsequently dismissed at his cost, respondent never having even inquired of the purchasing party what amount was paid to Lea or received by him.

In reference to the other forty acres claimed by complainant, al-

though respondent is fully satisfied that said complainant's claim is equally unfounded to the whole, yet respondent has never had or set up any right, title, claim or possession, to the same, either at or since the time of filing complainant's said bill; and hereby denies any possession of, or claim to the same, at any time or in any manner whatever.

Respondent further answering, says, that it may be true, and respondent thinks it is so, that complainant is not extraordinarily endowed with intellect, but as respondent is informed and believes, he has always passed mind enough to readily know and claim his own property, and to vigilantly look after and take care of the same, and has the character, as respondent is informed and believes, of being a close, saving, penurious man, and readily remembers and carefully and closely collects his dues even to a single dime; and respondent is fully persuaded that if complainant was possessed of half the amount of common honesty that he is of common sense, this suit would not now be pending, and respondent expresses this opinion after an acquaintance of thirty years with complainant and many of his transactions.

As to complainant's absence and sickness in the State of Ala. respondent knows nothing, though he may have been in Ala. and sick for a considerable length of time, and respondent remained ignorant of it; but respondent is informed, and believes, that complainant continued to reside in Polk County, where he lived in 1842, for a number of years afterwards, and even until long after said Park Lea had sold and conveyed said land to said John Davis, and Davis had entered upon the same, and had a portion of it in actual cultivation; and hence denies that said land was taken and sold either by Park Lea or any other person during complainant's absence and imbecility from sickness or any other cause. And here respondent sets up and relies upon the fact that said land was conveyed to said John Davis from whom respondent and his partners purchased by deed, and that said Davis entered upon and took actual adverse possession of the same, and he and those claiming under him have held actual adverse possession of the same under and by virtue of said conveyance for more than seven consecutive years next before the bringing complainant's said action of ejectment or his said bill in aid thereof, in this Honorable Court, and so respondent pleads and relies upon the statute of limitations of seven years of actual adverse peaceable and uninterrupted possession, under color of title, to the same extent as if the same were here pleaded in ample form. Respondent will here state, that which should have before been stated, that during the whole time, since the entry of said land and the issuance of said grant, complainant has never paid or offered to pay one cent of the public taxes upon said land; but that said taxes have always been paid by the said Park Lea and those claiming under him, as respondent is informed and believes. Respondent admits that said William Park Lea is the son of Luke Lea who was entry taker of the Ocoee District at the date of said entry, or that the said resp't, Calloway,

is the son-in-law of said entry taker, but it is also true, as respondent is informed, and believes, that at the date of said entry, viz., 5th of April, 1842, and for a considerable time thereafter, said Luke Lea was in a state of health that disabled him from discharging the duties of his office, and that the business of the same was actually attended to at that time, and for a considerable time thereafter, by other persons, and hence it cannot be true that if complainant had entered said land at the time he alleges, that he could have intrusted the perfecting his titles to the said Luke Lea, who was then sick and unable to attend to the same, as respondent is informed and believes; and respondent has no other or further knowledge, information or belief than that above stated, as to the reliance of said complainant relying upon the said entry taker to perfect his titles, and holds complainant to strict proof as to that *that* matter. Respondent denies all fraud with which he is charged, either expressly or by implication; and, having fully answered, prays to be dismissed with his reasonable costs.

JOHN CALDWELL,

I. B. COOKS, *Sol. for Respondent.*

STATE OF TENNESSEE,
Bradley County.

Personally appeared before me, John C. Gant, one of the Judges of Law, in and for the State of Tennessee, and of the Third Judicial Circuit, John Caldwell, the above named respondent, and made oath that the facts stated and set forth in the foregoing answer as of his own knowledge are true, and those stated upon information of others he believes to be true. JOHN CALDWELL.

Sworn to and subscribed before me this 21st day of Oct., 1854.

JOHN C. GANT,
Judge of the 3d Judicial Circuit.

(*Exhibit A.*) *To Caldwell's Ans.*

STATE OF TENNESSEE,
Bradley County.

This indenture, made this the 18th day of June, in the year of our Lord 1846, between William P. Lea, of the County of Bradley and State of Tennessee, of the one part, and John Davis, of the County of Polk and State of Tennessee, of the other part, witnesseth that the said William P. Lea, for and in consideration of the sum of fifty dollars to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed, and confirmed, and by these doth grant, bargain, sell, alien, convey, and confirm, to the said John Davis and his assigns forever, certain tracts or parcels of land, described on the general plan of the Ocoee District, as containing 160 acres of land more or less, and also as being the east half of the southwest quarter of sec. 15, in fr. township 4 south, and range 5 east, and also the east half of northwest quarter

of section 22 in the same range and township, and all and singular the appurtenances thereto belonging or in anywise appertaining, to the said John Davis, his heirs and assigns. I further covenant and bind myself, heirs, and representatives, to warrant, and forever defend the title to said lands against the lawful claims of all persons whatsoever. Witness my hand and seal this the 18th day of June, 1846. WILLIAM P. LEA, [SEAL.]

Witness,
ELIAS DAVIS,
YOUNG DAVIS.

(*Exhibit B.*) *To Caldwell's Ans.*

This indenture, made and entered into this 7th day of December, 1852, by and between John Davis, of the County of Polk and State of Tennessee of the one part, and John Caldwell of the County of Sevier, Thomas W. Mastin and Alexander H. Keith, of the County of McMinn and State aforesaid, of the other part, witnesseth that for and in consideration of the sum of six thousand dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said Davis, have thus bargained and sold, and by these presents sell, convey and confirm unto the said Caldwell, Mastin and Keith the following described pieces or parcels of land, to wit., the southeast fr. quarter of section 22, with the exception of so much of said fractional quarter as lies in the fork of the Ocoee River and Fightingtown Creek, on the east side of said; also the N. E. quarter of the same section; also the east half of the northwest quarter of the same section; also forty acres, it being *the southeast corner of the southwest quarter of section* 15; also the northwest quarter of section 23; also 120 acres of the northeast fr. quarter of section 23, it being the west half, and 40 acres in the N. E. corner of said fr. quarter section; also the northeast fr. quarter of section 27, containing 9 acres more or less; also the east half of the S. W. qr. of section 22, the 40 acres in the southeast corner of the southwest qr. of section 15, extends on the north to a conditional marked line between Nelson Carter and John Davis, beginning on a white oak near Mill Creek, running across a ridge to a black oak and post oak, on or near Patrick Nash line. The above described lands are in range 5 east of the basis, and fr. township 4 south, Ocoee District. I do hereby covenant with said Mastin, Caldwell and Keith, that I am lawfully seized of said lands, have a good right to convey, and that the same are unincumbered. I do further covenant, that I will warrant and defend the title to said lands to the said Mastin, Caldwell and Keith, their heirs, representatives, and assigns, against the lawful claims of persons whatever.

Given under my hand and seal the day and date above written.

JOHN DAVIS, [SEAL.]

Signed, sealed, and delivered in presence of us,

JAMES R. BUCHANAN,
WILLIAM GRANT.

I, the said John Davis, covenants for himself, his heirs, administrators, executors, and assigns, to forever defend the right, title, and claim specified in the foregoing deed. Witness my hand and seal the day and date written above in said deed.

JOHN DAVIS, [SEAL.]

Signed, sealed, and delivered in our presence,

JAMES R. BUCHANAN,
WILLIAM GRANT.

The joint and several answer of Alexander H. Keith, Jemima Mastin, widow of Thomas W. Mastin, deceased, John J. Mastin, Sarah A. Mastin, Susan N. Mastin, Reuben F. Mastin, Thomas H. Mastin, David C. Mastin, William W. Mastin and Martha S. Mastin. The last six of whom are minors, and answer by their regular guardian the said Jemima Mastin, to the bill filed against these respondents, the Polk County Copper Company, Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon, Charles Congdon, John Caldwell and others by William Pinckney Lea, in the Circuit Court of the United States for the District of East Tennessee at Knoxville.

These respondents, reserving all right and benefit of exception both to the form and substance of complainant's bill for answer thereto, or to so much thereof as they are advised it is necessary and proper for them to respond, answering, says: That since the filing of complainant's bill, they have made as thorough an investigation of the various allegations therein contained as it was possible for them to do, and from the facts and circumstances which have come to their knowledge, they firmly believe, and therefore state it, to be untrue that the complainant on the 5th day of April, 1842, or on any other day, entered as general entered, or otherwise, in the office of the entry taker of the Ocoee District, of the State of Tennessee, the eighty acres of land described in said bill.

They also believe, and from that belief state, that it is wholly untrue that the location for the entry of said eighty acres of land was handed by complainant to the entry taker; on the contrary they are fully assured from all the knowledge they can obtain on the subject, that the complainant never entered or filed any location for the entry of said tract of land. These respondents, Alexander H. Keith and John J. Mastin have been shown a paper which is now on file in the office of the entry taker of the Ocoee District, purporting to be the location for the entry of said tract of land, and of which exhibit No. 1 to complainant's bill is believed to be a true copy; but whether said paper is genuine or not, and whether it is the location upon which the entry of the land was made or not, these respondents do not know, nor do they deem it at all material to inquire, as the facts hereinafter to be stated will fully show. These respondents, however, will state that said paper, as they are informed, is not in the handwriting of complainant, nor of the entry taker, or any of his sons who did business for him in the office, nor is it signed by any one whatever.

These respondents further believe, and therefore state, that it is wholly untrue, that on the 21st day of August, 1842, or any other day, a grant was issued to complainant, by the name and style of "W. P. Lea," or by any other name, for said tract of land. None of these respondents have had access to the records in the office of the Secretary of State since the filing of complainant's bill, and therefore can neither admit nor deny the correctness of Exhibit No. 2 to said bill; they are advised that the grants are not recorded at length by the Secretary of State, but that a book is kept by him in which merely the name of the grantor and the date and number of the grant are registered. Be that as it may, respondents assert that the records of the office of the Secretary of State, even if they be as shown in Exhibit No. 2, give no support whatever to the establishment of complainant's right to the land in dispute.

These respondents admit that Exhibit No. 3 to complainant's bill is a true copy from the Register's books of the Register of the Ocoee District, as they now are, as near as may be. But they deny that said exhibit is a true copy of the original grant, which was based upon entry No. 5446, and issued on the 21st day of August 1842. Said original is now in the possession of the defendants in this cause, and will be exhibited to the Honorable Court at the proper time; from an examination of it, and also from an inspection of the Register's books aforesaid, it appears that the figures "47" after the numbers 5446 and the words "and the north half of the northeast" do not exist in the original grant, but have been inserted upon the Register's books after its issuance and registration, and have evidently been done with different ink, and are in a different handwriting. When, for what purpose, and by whom said changes were made upon the Register's books, these respondents do not know. It is true that in said original grant, and also in the copy upon the Register's books, the letters "ark" after the P in the name of the grantor, seem to have been inserted after the original was written, but respondents do not believe, and therefore deny that they were made with different ink, and in a different hand from the original, but whether they were inserted before or since the issuance of the grant, these respondents do not know; nor do they know by whom the writing was done; they believe, however, that it was all the work of the person who filled the office of Register at the time of the issuance of the grant.

Respondent Keith states that said original grant *now* is in the same condition it was some two or three years since, when he first saw it, and all these respondents state that they have had no agency whatever in procuring said alteration to be made. These respondents believe from all the facts and circumstances in their knowledge, that said alteration was made by the proper officer honestly and in good faith for the purpose of distinguishing the lands which were subsequently granted to complainant by the name and style of William P. Lea, from those which had been previously granted to William

Park Lea by the same name and style. Respondents are informed and believe that it can be established by indisputable proof, that said alteration was made for the purpose above stated, and not with a view to injure or defraud complainant, and that the rights of the parties have been in no way changed or affected thereby; and respondents know that said alterations can be shown to have existed many years before the land described in the grant was supposed to be of any considerable value. These respondents deny that the original grant above referred to differs from the original entry, and from the records of the office of the Secretary of State, in the number of entry, description of land or other particular, except that in some instances the Christian name of the granter is written at full length, and in others *others* it is abbreviated or merely the initials are given; it is believed to be true, however, that the copy of said grant exhibited to complainant's bill does differ in all the particulars as charged in said bill.

For the purpose of showing to the Honorable Court how ludicrous and flimsy is the pretext upon which complainant rests his claim to relief in this cause, respondents beg leave in this connection, to exhibit a true statement of the entire records of the country in relation to the entry and granting of the particular tract of land in question.

Supposing it to be true as charged, but which these respondents by no means admit, that the original location for the entry of the land is in the name and style of William P. Lea, that argues nothing in favor of complainant, as that name and style is common both to him and to William Park Lea, and it is indifferently used both by themselves and others in their business transactions, as can be abundantly shown by proof. The Entry Taker of the Ocoee District, according to the requirements of the statutes of the State of Tennessee, kept in his office a well bound book in which was recorded, 1st, the No. of entry; 2d, the name of the enterer; 3d, the date of the entry; 4th, the quantity of land, and 5th, the price at which it was entered. This book contains, as respondents are informed, the first official acts of the Entry Taker when he received the locations of different persons and marked the number of the entry and name of the individual entitled as entered to the land therein described. Moreover, said book, as respondents are advised, was open to the inspection of all powers, and indeed served as a sort of index to other records in the office.

These respondents, Alexander H. Keith, and John J. Mastin, have but allowed to inspect said book since the institution of complainant's suit, and they find therein recorded in a large, bold, full hand, without any erasure, alteration or interlineation, the following, "Entry No. 5446, William Park Lea, April 5th 1842, 80 acres, one cent per acre." It is evident from the connection in which said statement appears with regard to other similar acts of the Entry Taker, that it must have been made at the time the book was originally made up, and it also establishes the fact that at that time William Park Lea

and not that complainant was known and understood to be the enterer of the land. In the book in which the entries are recorded, the name is written William P. Lea, and in the grant it was first written William P. Lea, whilst in the office of the Secretary of State, it is simply recorded as W. P. Lea.

This statement shows conclusively that there was but little attention paid by the officers of the State to the Christian names of persons who entered lands or to whom grants were issued for the same.

It is admitted that Luke Lea, the cousin of complainant, was in 1842, and for several years thereafter, the Entry Taker of the Ocoee District, and that complainant resided in an adjoining county, and was well known to said Entry Taker.

It is also admitted that said Entry Taker had at that time a son by the name of William Park Lea, but what was his age in 1842, these respondents do not know. It is true that a number of entries were made in the said district for the benefit of the said William Park Lea, but whether they were made by himself, or by his father for him, these respondents do not know. It is, however, utterly untrue that there were any such means adopted as is charged in complainant's bill to distinguish between the entries of complainant and those of the said William Park Lea, as these respondents believe.

These respondents, Alexander H. Keith and John J. Mastin, after a careful examination of the records in the office of said Entry Taker, state that it is positively untrue that the lands entered by or for the said William Park Lea, and subsequently owned and controlled by him, were marked on the plan of the District, in the certificates of entry, and in the grants in the name of William Park Lea, for the purpose of distinguishing them from the lands entered by complainant, or for any other purpose, and they deny that they are so marked at all.

They also state that they have examined the records in the Entry Taker's office in relation to the various tracks of land described in the grants referred to in Exhibit No. 2, to complainant's bill.

It is not positively stated in said bill, but the impression is evidently intended to be made by the draftsman upon the mind of the Honorable Court, that the complainant was the real owner, and that grants had been issued to him for all of said lands. Respondent finds that nearly all of said lands were really and in truth entered by the said William Park Lea, and have always been known as his lands, and many of them have been disposed of by him without any objection on the part of complainant, so far as these respondents know. In the certificates of entry, in the book hereinbefore referred to, in which the names of the enterers are recorded, and in the grants, the name is variously written as William Park Lea, William P. Lea, Wm. P. Lea, and W. P. Lea; and this contrariety appears in many instances, where it has never been questioned that the lands described were really the property of the said William Park Lea.

It appears, moreover, in many instances, in the records in the

said Entry Taker's office, that the letters ark in the middle name are stricken out, while in other instances as in the case at Bar, the letters seem to have been inserted after the original was written.

These respondents can neither admit nor deny the correctness of Exhibit No. 4 to complainant's bill, as they have not been able to examine the records therein referred to. Said exhibit is introduced to establish the position that said Entry Taker for the purpose of distinguishing the entries made for his son, marked them on the plan, in the certificates and in the grants in the name of William Park Lea. If complainant had been gathering up the facts to embody in his bill, and had been desirous to elicit the truth, he would have known that all of said entries, with two exceptions, were made within the past year, and long after the death of Luke Lea, the Entry Taker as aforesaid. He would also have known that on the plan of said District, in nearly every instance the lands described in said grants are marked as having been entered by William P. Lea, Wm. P. Lea, or W. P. Lea, and in only two or three instances is the name William Park Lea written at full length.

It is admitted that said eighty acres of land was considered of but little value at the time it was entered, and for several years afterwards, but it is positively untrue, as respondents believe, that it was entered by complainant for grazing purposes, or mountain range for cattle, or for any other purposes whatever. These respondents are informed that complainant did enter some lands in the Ocoee District for grazing purposes, but all of said lands lie adjacent or convenient to the farm, known as the Big Savannah, on the Hiwassee River, on which complainant and his brother resided in 1842, and none of them lie in less than eighteen or twenty miles of the land in dispute; and respondents also believe, and from that belief state that the complainant never used tract of land for grazing purposes or mountain range for cattle, and was never upon the land until long after it had been entered and granted. Respondents have been advised, and so charge the fact to be, that the complainant made no entries in said District prior to the 15th day of April, 1842, and they believe from all the facts and circumstances within their knowledge, that it will be impossible for complainant to show that any lands entered on the 5th of April, 1842, have been used and controlled by him as his property, and moreover, that no lands whatever in the same section of country in which the land in dispute is situated, was ever claimed by complainant or used by him. These respondents do not know what attention was paid by complainant to the preservation of his muniments of title; but if he neglected to watch after his investment in the lands in the Ocoee District, it is the first time in his life, as respondents suppose from his general character, that he ever neglected any investment he made, or any claim to which he was entitled. It is untrue, as respondents are informed and believe, that the complainant has been absent from the country for the last two or three years, and it is positively untrue, that during that time

the said William Park Lea, being still a minor, constituted one John Hambright his agent and attorney, and also left the country, and the said Hambright as agent for said William Park Lea, claimed the said eighty acres of land as the property of the said William Park, and conveyed it to one John Davis.

These respondents state that on the 18th day of June, 1846, the said William Park Lea, in his own proper person, conveyed said tract of land to the said John Davis, who immediately thereafter took possession of the same, and continued to use and control it adversely to the claims of all other persons until the 7th of December, 1852, when he sold and conveyed 40 acres, being the south half of said tract of land, to respondent Keith, Thomas W. Mastin, deceased, and respondent co-defendent, John Caldwell. These respondents do not know what effect the fever and ague had upon complainant during his visit to Alabama, nor how long said disease continued upon him, but judging from the many loose and random charges made in said bill, which are positively contradicted by the records of the country, respondents are free to admit that his memory has not only been almost, but totally destroyed. Respondents believe, however, that complainant's memory is not so treacherous as said bill represents it to be, but that the allegations and charges in said bill have been concocted by other parties interested in the speculation, and the want of memory on the part of complainant, is to be relied upon as an excuse for the many errors and mis-statements which this record exhibits.

The various allegations in complainant's bill in relation to the said Hambright as agent aforesaid assuming the control over said land in the absence of complainant, the discovery of copper ore in the neighborhood of said lands, and perhaps upon it, the institution of the suit for the land by William Park Lea, the grounds upon which said suit was brought, and the manner and cause of its being compromised, and also the other allegations in that connection, are so mixed up with truth and falsehood, that they can only be answered by giving a true history of the transactions referred to.

In the month of October, 1852, as is now remembered, a contract was entered into with John Davis, by which respondent Keith, John Caldwell, and Thomas W. Mastin, now deceased, were to be allowed to test the laws of said Davis, embracing about one thousand acres, and of which the forty above described constituted a part, with the privilege of purchasing the same within a given time, at six thousand dollars.

Mining operations were immediately commenced on said lands, and particularly on the 40 acres above described, and resulted so favorably, that on the 7th December, 1852, a purchase was effected, and a conveyance taken from the said Davis, the entire consideration of six thousand dollars being paid at the time. At the date of said purchase, and indeed, at the time negotiations were first entered into with said Davis, he had in his possession a grant from the State of

Tennessee, to William Park Lea, for the eighty acres of land described in complainant's bill, and a deed from the said Lea to himself, dated as before stated, on the 18th day of June, 1846. These respondents state that the south half of said 80 acres was embraced in the sale by Davis, of the 1000 acres as before stated, and so far as these respondents know, the purchase was made in good faith, without any knowledge or suspicion on the part of any one of the purchasers that there was any other claimant but the said Davis to said land, and all the purchase money was paid long before any such knowledge or suspicion was had by any one of the purchasers.

These respondents, therefore, rely upon the defence that they are purchasers for a valuable consideration without notice. After said purchase the deed from Lea to Davis, which had not been previously registered, was duly proven by the oath of the subscribing witnesses, and admitted to record in Polk County, as was also the deed executed by Davis, as above stated. Mining operations were continued upon said land with great success, and prior to the death of Thomas W. Mastin, in July, 1853, several thousand dollars' worth of valuable copper ore had been lifted, and to some extent, prepared for market. Shortly after that event, viz., in August, 1853, as is now remembered, an action of ejectment was instituted in the Circuit Court of Polk County, by William Park Lea, against respondents Keith and John J. Mastin, and against John Caldwell and James Gray, to recover the possession of said 40 acres of land, and about the same time a bill was filed in the Chancery Court at Cleveland, by the said William Park Lea, by his attorney in fact, John Hambright, to enjoin further operations upon said land, and to inhibit the removal of the copper ore which had been lifted as hereinbefore stated.

It is believed by all these respondents that there was not the slightest foundation in truth or justice for the institution of said rents, and it was never expected or intended that they should come to a trial, but they were conceived and set on foot, as respondents firmly believe, for the sole purpose of extorting money by compromise from the true owner of the land, upon the supposition that large sums of money would be paid to quiet the title of the property, the value of which, although considered immense, was, in a great measure, speculative, and defendant upon many contingencies; and from all the facts and circumstances attending the institution and progress of complainant's suits, these respondents have no hesitation in saying that they have been set on foot for the same unworthy and disreputable purpose.

These respondents never had the slightest apprehension that the claim of said William Park Lea would or could be successfully prosecuted, and although it was exceedingly unpleasant to think of having so valuable a property tied up for years by injunction in the courts of the country, yet these respondents would never have suffered themselves to be so far imposed upon as to be forced to buy off the unfounded claim of the said William Park Lea. In this state of

affairs the Polk County Copper Company, the corporators of which, as then understood, were Thomas H. Calloway, Samuel Congdon, and Lyman W. Gilbert and respondent, A. H. Keith, during the negotiation became a corporator, proposed to purchase above one hundred and fifty acres of the land sold and conveyed by John Davis on the 7th of December, 1852, as above stated, including the south half of the 80 acres claimed by complainant in his bill, and also other lands and interests owned by the same parties. A sale was ultimately effected to the said company of the entire property, upon condition that the vendors should be at no trouble or expense in adjusting the suits with the said William Park Lea.

Immediately after said purchase by the Polk County Copper Company, a compromise was effected with the said William Park Lea *vs.* his Agent, John Hambright, but upon what terms these respondents do not know certainly, and that matter is left to be answered by their co-defendants in this cause. It is believed to be true that in said compromise, a quit claim deed, or some kind of relinquishment, was taken from said Lea, or his agent, John Hambright; but as it is wholly untrue that said compromise was acceded to by said Lea, as is insinuated in complainant's bill, for the reason that the said Lea knew that he had never had any title to the land. Respondents do not knqw certainly what were the grounds upon which the suits by William Park Lea were instituted; it was alleged in the bill that the deed under which the said John Davis claimed was a forgery, but this bill was not sworn to by Lea himself who knew how the facts were, but by his agent; and respondents are fully satisfied that there was no truth in the allegation.

Various rumors were circulated in the country in relation to the grounds and merits of said suits, but respondents believe that they were stated merely to bring about a compromise, and they find that the same practices are being resorted to in relation to the present suit either to accomplish the same purpose, or to excite public opinion in favor of complainant.

These respondents believe it is wholly untrue that complainant did not know, until a short time before the institution of his suit, that minerals had been discovered upon the lands described in his bill. Respondents will here state that from the time the first vein of copper was opened on said lands, in the fall of 1852, the mine was known to be valuable, and became the subject of general conversation, and was the matter of public notoriety in Polk and the adjoining counties; and particularly was such the case after the work had been suspended by the order of the chancellor, and during the litigation that ensued.

During all this time, and indeed until a few weeks before the institution of the present suit, when complainant went to Dalton to give this Honorable Court jurisdiction, he resided, as respondents are informed and believe, in the section of East Tennessee, in constant communication with the mining region, and associated with persons

who made the developments there the almost constant theme of conversation. Under these circumstances it would seem that if complainant had entered this particular tract of land, and was sufficiently well acquainted with its locality to induce him to select it for grazing purposes, his memory, however treacherous, would have served him to remember that he owned lands in that vicinity, or would at least have put him upon his inquiry. More particularly would such a supposition arise when it is known that complainant's most prominent trait of character is an inordinate love of money, and that he is so exceedingly penurious, even about the smallest matters, that he never forgets an investment he makes, or a debt that is due him to the value of ten cents. According to complainant's own showing, however, after this land had been granted for twelve years, after it had been claimed, used, and controlled, during all that time, as the land of William Park Lea, and those holding under him, after it had been sold and conveyed, time and again, by assurances which were spread at length upon the records of the country, and for considerations which would necessarily excite public attention and conversation, after it had been made the subject of discussion in and out of the court-house and in different counties, it was left to one Alfred D. Taylor to inform complainant that he was the true owner of the land; the said Taylor has resided for many years in the City of Chattanooga, and was a neighbor of complainant at the time he communicated that information to him; but is a man who, in complainant's estimation, is wholly unworthy the confidence or esteem of any honest man, and is engaged in prying into defective titles, and instituting suits against innocent persons who are using their *their* honest endeavors to develop the resources of the country.

By what channel the astonishing information, that complainant was the owner of said tract of land, was communicated to the said Taylor, this Honorable Court is not informed by complainant's bill; and but for the fact that the complainant consented to give said Taylor one-half the land, the fact that complainant was the true owner would forever have remained a profound secret. Complainant *now*, after obtaining the secret *sums* to repudiate the agreement with the said Taylor, but respondents believe the reason of it is that he has been enabled to make a better contract with other parties, or that said contrivance is resorted to with the assent of said Taylor and his associates to prevent attention to their Champerton agreements.

These respondents suppose it to be true that complainant has never seen the original grant No. 5744, dated 21st August, 1842, and that he does not know where it is; but it is believed to be wholly untrue that complainant paid the fees upon said grant, and trusted to his kinsman to attend to his title.

For many years after the entry of said lands complainant had a brother and sister, and other relatives, being in Cleveland, where the offices of the entry-taker and register were kept, and complainant spent a good deal of his time there, and, as respondents are informed and believe, lifted all the grants to which he was entitled.

It is wholly untrue that said grant was not until recently in the possession of William Park Lea, and it is untrue that it is now or ever was, so far as these respondents know, in the possession of the said Hambright. It is believed that the grant was delivered to John Davis by the said *William* Park Lea, on the 18th day of June, 1846, and continued in his possession until the 7th of December, 1852, where it was delivered over to those to whom he sold and conveyed the land on that day, and it has been in the possession of the vendors of the said Davis, and those claiming under them, to the present time, and will be exhibited to the Honorable Court by some of the defendants in this cause. It is believed to be untrue that the said Hambright ever sold and conveyed said tract of land to Davis, or that he ever made an affidavit that the grant was lost; these respondents never knew, until in 1853, that the said Hambright was the agent of said Lea, and they believe that his agency first commenced in that year.

It is true that an action of ejectment has been instituted by complainant as charged. It is also true that said Polk County Copper Company, since their purchase, have been taking out large quantities of copper ore from said land, and are still engaged in mining upon the same. These respondents disclaim all title to the north half of the 80 acres of land now claimed by complainant, the same is owned and claimed by some of the other defendants in this cause, and they can state the facts in relation thereto.

These respondents further state that the said John Davis, and those holding under him, have had the continued and adverse possession of said forty acres of land, claiming the same under deeds purporting to convey estates in fee simple, for more than seven years before the filing of complainant's bill, and they therefore rely upon the statute of limitation of seven years, and plead the same in bar to the relief sought by complainant.

These respondents deny all fraud and combination which is charged or insinuated against them, and, having fully answered, they pray to hence discharge with their costs.

WILLIAM F. KEITH & JNO. B. HOYLE,
Solct's for Respondents.

STATE OF TENNESSEE,
McMinn County.

Before the undersigned, T. Nixon Van Dyke, one of the Chancellors of the State aforesaid, personally appeared, Jemima Mastin, Alexander H. Keith, and John J. Mastin, three of the respondents in the foregoing answer, and made oath in due form of law that the facts stated in said answer of their own knowledge are true, and those stated from the information of others they believe to be true.

JEMIMA MASTIN,
J. J. MASTIN,
A. H. KEITH.

Sworn to and subscribed before me, October 28th, 1854,
T. NIXON VAN DYKE, *Chancellor, &c.*

The answers of the Polk County Copper Company, by its Secretary, Samuel Congdon, to the bill of complaint filed against it and others in the Circuit Court of the United States for the District of East Tennessee, at Knoxville, by William Pinckney Lea.

The respondent, the said Polk County Copper Company, reserving to itself all right of exception to the said bill of complaint for answers thereto, by its Secretary, Samuel Congdon, says, that Lymen W. Gilbert, of the City and State of New York, is president of said corporation, and that Samuel Congdon is secretary to the same.

And the respondent further answering states, that it begs leave to adopt for the sake of brevity, and does hereby adopt, the answers of Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon, and Lymen W. Gilbert, as its own, to all the several matters and things of complainant's said bill of complaint, and herein adopts and sets up all and several the matters of defence insisted on and relied upon in said answers against the alleged equities of complainants, and in avoidance, discharge, and bar of all the relief prayed as against this defendant. This respondent believes the direct admissions of said answers to be true, and its denial as therein stated, and its matters of avoidance as therein stated. Respondent in answering would cover the same ground, and hence, as before stated, does answer in all things as the said named persons have answered, believing the same in all particulars to be as is stated therein.

In conclusion, respondent will state that the Polk County Copper Company, though entitled to have a common seal, have none as yet.

And now having fully answered, respondent prays to be now dismissed with his reasonable costs and charge, that complainant's injunction, if granted, be dissolved, and that his bill as to defendant be dismissed, &c.

SAM'L CONGDON.

GEORGE W. ROWLES, *Solicitor for Defendant.*

STATE OF TENNESSEE,
Bradly County.

This 24th day of October, 1854, personally appeared before me, John C. Gant, one of the Judges of the Circuit Court for the State of Tennessee, and made oath in due form of law that the facts stated in his foregoing answer as secretary to the Polk County Copper Company, when stated as of his own knowledge, are true, and, when stated from information and belief, he believes them to be so.

SAMUEL CONGDON,
Sec'ty Polk County Copper Co.

Sworn to and subscribed before me the day and date above written.

JOHN C. GANT,
Judge of the 3d Judicial Circuit of the State of Tennessee.

(Nov., 1854.)

Joint Answer, &c., Charles Burnese, Isham Davis, and others, to the Original Bill.

The joint and several answer and disclaimer of Charles Burnese, Isham Davis, Martin Shuffield, John Tonkins, Clarinda Crumly, and her husband, —— Crumly, to the bill of complaint filed against them and others in the Circuit Court of the United States for the District of East Tennessee, at Knoxville, by William Pinckney Lea, complainant.

These defendants, reserving to themselves all right of exception to the said bill of complainant, for answer thereto say, that they, or neither of them, do not know, to the best of their knowledge or belief, that they, or either of them, ever had, or did claim or pretend to have, or do they, or either of them, now claim, any right, title, or interest of, in, or to the estates and premises described in the complainant's bill, to wit, eighty acres of land, the east half of the southwest quarter of section fifteen, fractional township four south, and range five east of the basis line, in the Ocoee District, Polk County, East Tennessee, or any part thereof; and these defendants do disclaim all right, title, and interest to said land, estate, and premises, and every part thereof.

These respondents deny that before or at the institution of complainant's action of ejectment, or at the filing of his bill of complaint in this honorable Court, they, or either of them, were on the premises described *described* in the said bill, as possessors of the same, or any part thereof, but were on said premises alone as hands and employees of the Polk County Copper Company, deriving or having no benefit from said lands otherwise than what accrued to them as wages or hire for services rendered to said Polk County Copper Company, in their mining operations.

And these defendants deny all and all manner of unlawful combination and confederacy that may be implied by the charges in said bill, without this, that there is any other matter, cause, or thing in complainant's bill contained, material or necessary for these defendants to make answer unto, not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, is true, to the knowledge or belief of these defendants. All which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable Court shall direct; and they humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf, most wrongfully sustained.

G. W. ROWLES,
Solicitor for Respondents.

STATE OF TENNESSEE,
Polk County.

This 26th day of October, 1854, personally appeared before me, Benjamin Mann, an attorney, justice of the peace in and for the county

and State aforesaid, Charles Burnese, Isham Davis, Martin Shuffield, John Tonker, Clarinda Crumly, and —— Crumly, and made oath in due form of law that their foregoing answer and disclaimer, and the matters therein contained, when stated on their own knowledge, is true, and when stated on his own knowledge, is true, and when stated on the information of others, they believe it to be so.

his
CHARLES + BURNESE,
mark.
MARTIN SHUFFIELD,
JOHN TONKINS.

Sworn to and subscribed before me, the day and date above written.

BENJAMIN MANN,
A Justice of the Peace of Polk County.

From the best information received, Isham Davis has moved to North Carolina, Clarinda Crumly to Georgia, and her husband is somewhere in the State of Arkansas. October the 31st, 1854.

Fees $1 00. BENJAMIN MANN, *J. P.*

Exceptions to Answer of Calloway et al. to Original Bill.

"WM. P. LEA
vs.
POLK CO. COPPER COMPANY AND OTHERS.

The complainant excepts to the answer of the defendants, Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon, and Lyman W. Gilbert, and the Polk County Copper Company, and sets down and shows to the Court here the following causes of exception. (Filed November 30, 1854.)"

1. The bill calls upon the said defendants, in regard to certain suits instituted by William Park Lea against the defendants, Caldwell, Keith, and Mastin, for or on account of the land in controversy, to discover who was said Lea's agent in the institution and prosecution thereof, when the same were compromised, the terms and consideration of said compromise, with all the papers evidencing said compromise.

The answer admits the bringing of the suits, the compromise of the same by said defendants, and states the terms in general language, and the consideration of the compromise, but does not discover the papers evidencing the same, nor are said papers filed with the answer. (See page 7 of the answer.)

2. The bill calls upon said defendants to discover how the defendants, Thomas H. Calloway, Euclid Waterhouse, and Lyman W. and Charles Congdon, became interested in the property in dispute, and produce the papers showing the said facts.

The answer states how said interest were acquired, but the defendants do not produce the papers. (See page 4 and 5 of the answer.)

The bill calls upon the defendants to answer as to their knowledge

of the original grant for the land in dispute, No. 5744, dated August 21, 1842, where the same is now, who has it, in whose hands it has been since it was taken from the office of the Register, and they are required to produce the same and file it with their answer.

But the answer omits to respond to these interrogatories very definitely, and wholly passes over any response to the interrogatory in whose hand the grant has been since it was taken from the office of the Register. (See answer, pages 7 and 9.)

Upon which points the complainant prays the judgment of the Court. MEIGS NELSON SNEED, *Sol.*

Answer of Calloway, Waterhouse, Gilbert, and Congdon to Exceptions to their Original Answer.

(Filed, Jan'y 29, 1855.)

The further joint and several answer of Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon, and Lyman W. Gilbert, to the original bills of complaint against them and others, filed in the Circuit Court of the United States for the District of East Tennessee, at Knoxville, by William P. Lea.

These defendants saving and reserving to themselves the same benefit of exceptions to the said original bill, as by their former answer to such original bill is saved and reserved, for further answer to such original bill as to the matters to the third exception taken to their former answer, say: that they and each of them have no knowledge by whom said original grant, specified in the pleadings, was taken from the office of the register, by, nor on such point, have they, or either of them, any information on which to predicate a belief, but they have no reason to believe that it was taken from said office by any other person, than William Park Lea, who, as they believe, entered and owned the land described in said original grant, and was entitled to take the same as his proper title paper?

These respondents, nor either of them, have no knowledge, or information on which to predicate a belief, as to where said grant was from the time of taking the same from the Register's Office, down to the sale of the land by William Park Lea to John Davis, and have no reason to believe that it was in the possession of any other person than William Park Lea during such time.

These respondents are informed and believe, but have no personal knowledge, that on the purchase of Keith, Caldwell, and Mastin, as stated in their former answer to the original bill, that said original grant was passed by John Davis to said purchasers. And these respondents believe, having no personal knowledge of the fact, that William Park Lea, on making sale of said land to John Davis, handed said grant to him. And these respondents say, that since their purchase of Keith, Caldwell, and Mastin's heirs, stated in their former answer to the original bill, the possession of said grant has been as is therein stated, being sometimes in the possession of one party of said vendees, and sometimes in the possession of another; it was

last in the possession of Thomas H. Calloway, and by him filed, as respondents are informed and believe, in the office of the clerk of this hon'l court at its last term.

These respondents say they have no knowledge or information where said grant has been since it was taken from the register's office, or in whose hands the same has been since then other than they have hereinbefore stated, and in their answer to the original bill.

And now having fully answered the matters of said exception, respondents pray as they have prayed in their original answer.

THOS. H. CALLOWAY,
LYMAN W. GILBERT,
SAMUEL CONGDON,
EUCLID WATERHOUSE.

STATE OF TENNESSEE,
Knox County.

This day personally appeared before me, William C. Kain, a notary public for the County and State aforesaid, Lyman W. Gilbert, who made oath in due form of law that the facts stated in the foregoing amended answer as of his own knowledge are true, and those stated on his information and belief, he believes to be true.

LYMAN W. GILBERT.

Sworn to and subscribed before me this 9th day of Dec. 1854.

W. C. KAIN,
Notary Public.

KNOX CO., TENN.

Notary fee paid by Lyman W. Gilbert, $1.00.

W. C. KAIN, *N. P.*

STATE OF TENNESSEE,
Bradley County.

This day personally appeared before me, John C. Gant, one of the Judges for the Circuit Courts of the State of Tennessee, Euclid Waterhouse, and made oath in due form of law that the matters and things contained in his aforesaid further or amended answer, when stated as of his own knowledge, are true, and when stated on information, he believes them to be so.

EUCLID WATERHOUSE.

Sworn and subscribed before me this 23d December, 1854.

JOHN C. GANT,
Judge of the 3d Judicial Court in the State of Tennessee.

STATE OF TENNESSEE,
McMinn County.

This 16th day of December, 1854, personally appeared before me, Thomas H. Calloway and Samuel Congdon, and made oath in due

form of law that the matters of their foregoing answer are true, as is therein stated, in the manner therein stated.

THOMAS H. CALLOWAY,
SAMUEL CONGDON.

Sworn to and subscribed before me,

JNO. L. GOODALL,
Judge of the 4th Judicial Circuit in the State of Tennessee.

UNITED STATES OF AMERICA,
District of East Tennessee.

Be it remembered, that on the 9th day of December, 1854, I, John H. Payne, special commissioner appointed by the Honorable, the Circuit Court of the United States, for the District of East Tennessee, to examine all witnesses as well on behalf of William Pinckney Lea, complainant, as of Thomas H. Calloway, Euclid Waterhouse, and others, respondents, or either of them, in a matter of controversy pending in the aforesaid court at Knoxville, did, by the power in me vested by said appointment, cause to come before me at the office of the Register for the Ocoee District, in Cleveland, Bradley County, Tennessee, Jonathan C. Tipton, aged about , as a witness on behalf of the respondents in said cause; and the said Jonathan C. Tipton being duly sworn on the Holy Evangelist of Almighty God, deposeth and saith as follows:—

1 Question by respondent. You will please state if you were ever Register of the Ocoee District. If so, in what year did you enter on the discharge of your official duties, and in what year did you cease to act as Register?

Answer. I was Register of the Ocoee District, and entered upon the discharge of my duties on the 15th December, 1841, and resigned my office in the month of March, 1848.

2 Question by same. You will please state whether the grants on entries in the Ocoee District were filled up by the Register of said district. If so, where were the grants sent to afterwards, and for what purpose?

Answer. The grants on entries in the Ocoee District were usually filled by the Register of said district, but sometimes by his deputy, but in all cases they were signed by the Register proper and afterward sent to Nashville for the seal of the State and signatures of the Governor and Secretary of State.

3 Question. You will please state what the course of business was in relation to grants after they were filled up to be sent to Nashville, as you have stated. Were they sent on by mail for that purpose, or by private conveyance? State whether it was or not a common thing for grants thus filled to remain any length of time in the office, before being sent to Nashville.

Answer. Grants after being filled up were usually numbered and backed; they frequently remained in the office for a considerable time

before an opportunity could be had to send them to Nashville, as they were generally sent by private conveyance.

4 Question. When grants were returned to your office from Nashville, did you then proceed to record them?

Answer. It was my usual custom to record them forthwith after they were returned.

5 Question. Look on the paper, now here shown to you, purporting to be grant upon the State of Tennessee, to William Park Lea, No. 5744, for 80 acres of land, with an indorsement on the back of the same, in these words: "Filed in my office by Thomas H. Calloway, 9 o'clock, Nov. 28th, 1854, D. H. Cummings, Cl'k of U. S. Circuit Court." After examination, state whether the filling up in writing in the face of said grant is in your handwriting or not. You are requested to look in particular at the letters ark, as they stand after the capital letter P in the word Park, between the names William and Lea; and also look at said letters in the like connection where they occur near the foot of the grant immediately above the official signature of the Register, as to who has title: and state the result of your examination as to whose handwriting said letters *ark* are in.

Answer. The filling up of the grant before me is in the handwriting of Euclid Waterhouse, who was my deputy register at the time said grant was filled, but the letters ark, as they occur after the letter P, and which seems to have been added to said letter P after the filling up of said grant, from every appearance before me, I must believe it to be my handwriting.

6 Question. Please look on the paper now here shown to you, marked "Exhibit A. December the 9th, 1854;" have you diligently compared the same with the record of registration of grants for the Ocoee District? Is said original record now before you, in said Register's office? If so, is said exhibit a true and perfect copy from said record?

Answer. I have diligently compared the paper before me, marked Exhibit A, with the record of registration, and find the same to be a true and perfect copy of the same, with the exception of the word "the" first at the top, which is crossed out, and the word "fifty" toward the bottom, also crossed out. Which Exhibit A I have copied from the original record-book now in the Register's office.

7 Question. You will please examine the record of registration from which you took Exhibit A, and state if that part of it which is written is or not in your handwriting, and if any portion of it is not in your handwriting, you will state what part, writing the words out at length that are not in your handwriting; or if no part of the record is in your handwriting, you will so state.

Answer. That part of the record which has been written is my handwriting, except the number "47" in figures at the top, and the "and north half of the northeast" which occurs after the words east

half of the southwest, and the letters ark after the letter P, I believe to be my handwriting, from the evidences now before me.

8 Question. In order that your answer to the above question may be more obvious, and address itself to the eye at once, please take a pen and with red ink designate on Exhibit A the words not in your handwriting, by enclosing them in red lines; and also on said Exhibit A draw a red line under the word ark where you believe them to be in your handwriting, as stated by you.

Answer. I have made the designation as required.

9 Question. You will please state if Luke Lea, deceased, former Entry Taker of the Ocoee District, attended to the perfecting of titles to lands entered by the complainant, William Pinckney Lea, or did said Luke ever pay you money for your fees in relation to said complainant's title or grants to land in any shape?

Answer. I have no recollection of Luke Lea, former Entry Taker, ever attending to the perfecting of said grants, nor of his ever paying me any fees for the same.

10th. You will please examine the record of grants in the Register's office, now before you, of grants as registered Nos. 6250, 6258, and 6260, and state how the record appears to have been at one time as to the grantee's name, and how does it now stand as to the grantee's name? Give the names as it once appears to have been, and how it now stands.

Answer. I have examined the record of grant No. 6250, and find that said grant has first been recorded in the name of William P. Lea, and the words ark afterward inserted, making the record now read William Park Lea, wherever the name occurs in said record. I have also examined No. 6258, and find that said record had first been in the name of William Park Lea, and afterward, the letters ark being erased, leaving it now to read William P. Lea. I have also examined No. 6260, and find it to have been first recorded in the name of William Park Lea, and the letters ark being also erased, it now reads William P. Lea.

11 Question. Please give the quantity and description of the land covered by the grants respectively numbered 6258 and 6260, and state if your knowledge of the plan of the Ocoee District enables you to say in what county said lands are situate; and if so, how far from what is called the Savannah farm, formerly owned by Caswell Lea?

Answer. Grant No. 6258 covers one hundred and sixty acres, and grant No. 6260 covers two hundred and eighty acres, being in the same neighborhood and near the lands once owned by Caswell Lea, known as the Savannah farm, in Polk County.

12 Question. Please give the description of these lands as described in the record, as to the quarter, section, range, township, &c.

Answer. Grant No. 6258 is for the southeast quarter of section six in township one and range three east of the basis line, in Ocoee District, and grant No. 6260 is for the remainder of the southeast quarter of the 29th section, and the northwest quarter of the 33d

section, both in the second fractional township north and third range east of the basis line, in Ocoee District.

13 Question. You will now examine the record of grant No. 6250, and also give the range, quarter, section, &c., of said land; also the county in which it is situate, from the plan of the Ocoee District.

Answer. Grant No. 6250 is for the southwest quarter of section twelve in fractional township two and range four west of the basis line, in Ocoee District, and in Hamilton County.

14 Question. In reference to the record of this last grant, in whose handwriting do you believe the words ark after the letter P to be in?

Answer. I believe the letters ark, as they occur in the record above mentioned, to be in my handwriting.

15 Question. Please look on and examine the record of grants now before you, numbered as follows: No. 5599, No. 5701, No. 6251, No. 6252, No. 6253, No. 6254, No. 6255, No. 6256, No. 6257, No. 6259, No. 6261, No. 6262, No. 6263, No. 6264, and please state the number of acres each covers, the date of the grant, and the name of the grantee in each number.

Answer. No. 5599 is for nine acres; date of grant, 10th August, 1842; record in the name of William Park Lea. No. 5701 is for eighty acres; date of grant, 21st August, 1842; record in the name of William Park Lea. No. 6251 is for eighty acres; date of grant, 8th Dec., 1842; record in the name of William Park Lea. No. 6252 is for eighty acres; date of grant, 8th December, 1842; record in the name of William Park Lea. No. 6253 is for one hundred and sixty acres; date of grant, 8th Dec., 1842; record in the name of William Park Lea. No. 6254 is for eighty acres; date of grant, 8th Dec., 1842; record in the name of Willim Park Lea. No. 6255 is for eighty acres; date of grant, 8th Dec., 1842; record in the name of William Park Lea. No. 6256 is for forty acres; date of grant, 8th Dec., 1842; record in the name of William Park Lea. No. 6257 is for eighty acres; date of grant, 8th Dec., 1842; record in the name of William Park Lea. No. 6259 is for one hundred and sixty acres; date of grant, 8th Dec., 1842; record in the name of William Park Lea. No. 6261 is for three hundred and twenty acres; date of grant, 8th Dec., 1842; record in the name of William Park Lea. No. 6262 is for three hundred and twenty acres; date of grant, 8th Dec., 1842; record in the name of William Park Lea. No. 6263 is for three hundred and twenty acres; date of grant, 8th Dec., 1842; record in the name of William Park Lea. No. 6264 is for one hundred and twenty acres; record in the name of William Park Lea; date of grant, 8th Dec., 1842.

We agree, with the assent of the commissioner, to continue over the further examination of the witness until Monday morning, 8 o'clock, the 11th of December, 1854, it now being 9 o'clock at night, and not having time to complete the deposition.

GEO. W. ROWLES, *Sol. for Respondent.*
THOS. A. R. NELSON, *Solicitor for Compl't.*
JOHN H. PAYNE, *Com'r.*

Examination of the witness, Jonathan C. Tipton, resumed Monday morning, eight o'clock.

JOHN H. PAYNE, *Com'r.*

16th Question. You will please examine the entry-taker's books and state when it appears from them that the land covered by the respective grants, Nos. 5764, 6215, 6258, 6260, 6217, 6218, and 6219, were entered, and then state whether or not all the lands covered by said grants lie in Polk County? and if so, are they situate or not in the neighborhood of what is called the Savannah farm, formerly owned by Caswell Lea?

Answer. Grant No. 5764 is for forty acres, and was entered the 15th of April, 1842. Grant No. 6215 is for one hundred and sixty acres, and was entered the 15th April, 1842. Grant No. 6258 is for one hundred and sixty acres, and was entered the 15th of April, 1842. No. 6260 is for two hundred and eighty acres, and was entered the 15th April, 1842. No. 6217 is for one hundred and sixty acres, and was entered the 15th April, 1842. No. 6218 is for one hundred and sixty acres, and was entered the 15th April, 1842. No. 6219 is for one hundred and sixty acres, and was entered the 15th April, 1842. All of which lie in Polk County, and are situate in the same neighborhood of what is called the Savannah farm in said county.

17 Question. You will please look on the face of the record of the grant No. 6218, one of the grants alluded to in the above question, and state how the record seems to have stood once as to the grantee's name, and how it stands now; and also state the description of this land as to section, quarter section, range, &c.?

Answer. I have examined the face of said record and find that where the name of the enterer first occurs it is in the name of William Park Lea, also where it occurs second time; but where it occurs the third time is written William P. Lea, and in the fourth and last place it was first in the name of William Park Lea, since which the letters "ark" have been marked out where the name occurs the second time, also in the fourth and last place; said land is situate in the sixth section of township first, in the third range, east of the basin line in Ocoee District, being the southwest quarter of said section, it also in Polk County.

18 Question. You will please examine the "plan" of the Ocoee District now before you, and please state if, on said "plan," the enterer's name is written on the lands entered; if so, you will please state it. Then look on the "plan" of said district, and state what name or initials of name is put down as the enterer, immediately on that part of the plan laying down and describing the east half of the southwest quarter of section fifteen, fourth fractional township south, range five, east of the basin line, Ocoee District, Polk County?

Answer. The usual course of the Entry-taker was to write the name of the enterer upon that part of the map containing the lands entered, but where the space was not sufficient to admit of the full

name the initials of the given name were put upon it with the surname in full. I find, upon the east half of the southwest quarter of section fifteen, in fractional township four south, and range five, east of the basis line, the initial of Wm. P. Lea put upon it.

19 Question. You will please look on the "plan" of the district now before you and state what name is put down on the enterer of the *the* land covered by grant No. 6262, for three hundred and twenty acres, referred to in your answer to the 15th question; also state if said grant, from the plan of the district, covers one or more pieces of land. Also look on the plan of the district and answer the same question with reference to the land covered by grant No. 6264, referred to by you in your answer to said question. Please describe the land as marked on the "plan" of the district.

Answer. Grant No. 6262 is for three hundred and twenty acres, being the northwest quarter of the twenty-ninth section, and the northeast quarter of section thirty, both in the fourth township and second range, west of the basis line, in Ocoee District, and in Hamilton County, and includes two pieces or quarter sections of land, and on the northwest quarter of section twenty-nine on said plan is marked Wm. Park Lea, and on the northeast quarter of section thirty is marked Wm. P. Lea. Grant 6264 is for one hundred and twenty acres, being the west half of the southwest quarter of the twenty-seventh section, and the southeast corner of the southeast quarter of the twenty-eighth section, both in the third range east and second fractional township north, and in Polk County, including two pieces of land; the west half of the southwest quarter is marked upon the plan W. P. Lea, and the southeast corner of the southeast quarter of section twenty-eight is marked upon the plan W. Park Lea.

20th Question. You will please state if you lived in Cleveland, Bradley County, in 1842; if so, please state if you were or not acquainted with the course of business in the Entry Taker's office in that year or the preceding year; if so, state whether or not the Entry Taker kept a book or books in which the name of enterers of land was put down. State all you may know on this point.

Answer. I lived in Bradley County in the year 1842, and in Cleveland, and was somewhat conversant with the business of the Entry Taker's office, and understood it to be the practice of the Entry Taker as well as his duty to keep a book in his office for the purpose of recording the names of the enterers of land with the numbers of the entry, &c.

21 Question. You will please look on the book marked B, state if you have seen that book before, and where; from it who appears to have made entry 5446, when it was made, and for how much land, and how much per acre, as appears from said book?

Answer. I have seen a book of that description in the Entry Taker's office, but do not know the book before me marked B, to be the same; entry No. 5446 was entered by William Park Lea, as ap-

pears from said book, and was entered on the fifth of April, 1842, and for eighty acres of land, and at one cent per acre.

22 Question. You will please state if this entry covers the land granted by grant No. 5744, now before you, purporting to have been granted on 21st August, 1842, for eighty acres of land?

Answer. It does.

23 Question. You have stated heretofore your belief of the handwriting in which the words ark in the original grant are in; you will now please state in reference to the record of said grant, as it appears in the Register's book, whether or not there is after the letter P, and between that and the name Lea, as it now stands, a considerable space? Please, if so, measure the distance from the letter P to where the L in the name Lea commences.

Answer. There is considerable space from the letter P to the name Lea, which I have measured, and find it to be seven-eighths of an inch in length.

24 Question. You will state, if in this space there appears, from the face of the record to have been any letters, and if so, name them; and what is the situation of said letters now, and if altered or erased, how does it appear to have been done?

Answer. There seems to have been the letters ark between the letter P and the name Lea, and there seems also to have been the letters Lea in the same space, but said space has been so erased and scratched, that I cannot tell which was first written, those the letters ark and the name Lea being, as it appears, erased or scratched over with a pen.

25 Question. You will please state if the capital letter L appears between the space spoken of, and on the words *ark*. If so, state whether you believe said L to be in your handwriting or not.

Answer. Said capital L does not conform in appearance to the other capital L made by me in the same record, but I am not sufficiently satisfied to say that I did or not make it.

26 Question. You will now please state if you, since your resignation of the office of Register, in March, 1848, have had anything to do with the office; and if the letters ark, where you stated you believed them to have been your handwriting, were, or not put there during your continuance in office? And if the letters ark, where you speak of their being erased or scratched over with a pen, if that was done by you, was it done during your continuance in office?

Answer. I was deputy Register under F. W. Lea, after my resignation as Register, and until 1850; as to the time when the ark alluded to was added to the letter P, I have no knowledge, having no recollection of the circumstance.

27 Question. You will please state while you were deputy Register, or while you were Register yourself, William Pinckney Lea called at the office for, or sent for his grants.

Answer. It seems to me that William Pinckney Lea did, at some

time, whilst I was Register or Deputy Register, did say something to me about a grant or some grants, but as to the particulars of his inquiries I am not able to state at this time.

28 Question. Have you any recollection of Luke Lea ever calling for, or taking out grants for lands entered by William Pinckney Lea?

Answer. I have no recollection of Luke Lea ever taking out any grants for lands entered by William Pinckney Lea.

Cross-examination.

1st Interrogatory by Complainant. Please describe the process or routine employed in Entry Taker's office at Cleveland, from the first to the last step in obtaining and perfecting a grant, including location, map, entry book, and record or registry of grant, in the order usually observed in the office.

Answer. The course pursued in regard to the above question, was that the enterer furnished a location, describing the lands he or she desired to enter, accompanied with the money for the same, upon which the Entry Taker usually gave a receipt for the same, naming the amount of money, the kind, and the number of entry, after which the name of said enterer were placed upon a map of the District kept for that purpose, and also upon a record book with the number of acres entered by said enterer at that time, and subsequently issued a certified copy of said entry which was handed over to the Register of said Ocoee District, who would then issue a grant for the same, and send it to Nashville for the seal of the State and signature of the Governor and Secretary of State, upon receiving which said grant was returned to the Register, and then copied by him in a record book kept by the Register for that purpose; the date of such record with the signature of the Register was put upon the back of said grant when it was complete.

2 In. by same. Did not the Entry Taker also record the locations in books kept in his office? Were not the certified copies generally issued in printed forms filled up by the enterer, and are not the books A, B, C, now shown to you in the office—the office books containing, in printed forms, copies of the locations made in the office, filled up and kept in the office as office books, by the Entry Taker or his clerks?

Answer. It was my understanding that the locations of entries were copied into books kept in the office for that purpose; the certified copies of entries were usually upon printed forms filled up by the Entry Taker. I have not been so familiar with the books of the Entry Taker's office as to be able to say whether or not the books before me, A, B, and C, are or are not the same, nor as to whether or not those books were kept for the purpose of making such records at the time of entry, or at a subsequent time.

3 In. by same. In your answer to the 21st interrogatory of defendants, you refer to No. 5446 in book B, and the name of William Park Lea in said book opposite that number—will you please state

whether that book is not marked on the lid Fran's W. Lea, and is it an office book, and whether there is not another book now in the office, and now shown to you, marked "day book C," which purports to contain the same memoranda—and are you able to state which of said books is the original, or whether both, or either, were kept by the Entry Taker or his clerks?

Answer. There are two books marked day book B and C, and upon the back of book B is marked Fran's W. Lea; both books seem to contain the same memorandas; I am not able to say as to whether or not they or either of them are the original, or as to whether or not they were kept by the Entry Taker, or his clerks, as office books.

4 Int. by same. Does either of said memorandum-books purport to contain any other facts than the number of location, the name of the enterer, the price per acre, and the amount in value of the land entered? Describe, as well as you can from the heading of the pages, the facts intended to be shown by said book, and state whether or not it shows, in any part of said book, what part of the quarter section was entered, the range from the basis line, or the beginning corner.

Answer. Said books are intended to show in the first column the No. of the location; next, the enterer's name; next, the No. of acres entered; next, when entered; next, the kind of entry; next, at what price; and last, the amount of money paid in for said entry. It does not purport to show anything in regard to the situation of the lands as to quarter, section, or range.

5 Int. by same. Do not the books referred to in my second cross-interrogatory as A, B, and C, purport to contain, in each case, a full description of the land entered? And will you please copy in your answer, from said book, entry No. 5446, and state whether all the entries in said book do not purport to contain similar descriptions at length of the lands entered by different enterers.

Answer. Said books do purport to contain a full description of the lands entered, as follows: No. 5446. William P. Lea enters, as general enterer, eighty acres of land, being the east half of the southwest quarter of section fifteen in fr. township four so. and range five east of the basis line, in the Ocoee District, beginning at the southwest corner of said quarter section. Entered at one cent per acre. April 5th, 1842. And all the other entries in said books purport to show the same descriptions in all entries therein contained.

6th Int. by same. Please to state, from an examination of certified copies now in the office, or from your general knowledge of the course of business, whether or not the "*certified copies*" issued by the Entry Taker to the enterer were not printed forms corresponding with those in books A, B, and C, and filled up in the same manner, with a certificate appended thereto by the Entry Taker, and give an example of the form of certificate and signature thereto, taken from any certified copy now before you in the office.

Answer. The certified copies from the Entry Taker to the enterer were generally in printed forms, with the certificate appended, and

corresponding with said books A, B, and C, with the exception of said appended certificate, which reads as follows: I certify the foregoing to be a true copy from the records of my office. Luke Lea, Entry Taker of the Ocoee District.

7th Int. by same. Have you ever seen the certified copy issued from the Entry Taker's office on entry 5446, copied in your answer to my fifth cross-interrogatory, since you recorded the grant issued upon said entry? And if so, when, where, and in whose possession did you see it?

Answer. I have no recollection of seeing said certificate of entry No. 5446 since recording the grant for the same.

8th Int. by same. Previously to the commencement of your examination as a witness in this case, did you hear all or either of the defendants in this case say that he or they had found said certified copy? And if so, when, where, and by whom was such conversation had, and what was said?

Answer. I have not heard either of said defendants say that they or either of them had found said certified copy.

9th Int. by same. Did you hear either of them say, previous to your examination, whether he had seen said certified copy? And if so, when and by whom, and what was said?

Answer. Previous to the commencement of this investigation I was inquiring of Thomas H. Calloway, one of the defendants in this case, as to whose name the certified copy of the disputed entry was in, to which he replied that the certificate was in the name of William P. Lea.

Question 10th by same. Did Mr. Calloway in that conversation tell you when or where he had seen the "certificate of entry" or "certified copy" of entry?

Answer. I do not recollect that he said anything about seeing said copy at all.

11th Int. by same. In your answer to my third cross-interrogatory you describe the books referred to as being marked "Day-Book B & C," and say that "upon the back of book B is marked Fran's W. Lea." Will you please state which of those books was shown to you, and to which did you *did you* refer in your answer to the defendants' twenty-first interrogatory?

Answer. It was book marked B, with the name of Fran's W. Lea upon the back, that was shown me at the time referred to; but did not mean to refer to a particular book seen in the Entry Taker's office, but merely to the fact that I had seen some such book or books containing copies of entries or location in said office.

12th Int. by same. In said book marked B, referred to in your last answer, and shown to you by defendants at the time their 21st interrogatory was propounded, are not the names of the enterers omitted from No. 7245 to No. 7258, and is there not a note between those numbers, in the following words? "Note.—The numbers omitted on this page, upon a re-examination of the locations, proved to have

been previously entered; the locations were recorded, but no copies given out, and they are now erased on the record-book. A. Lea." In whose handwriting is said note in book B?

Answer. There is such a note in book B as above referred to, and omission of names from number 7245 to 7258, though there appear to be erasures below said note and above No. 7258. Said note is correctly copied from said book in the last interrogatory, and I believe the handwriting of said note to that of J. A. Lea.

The further taking of this deposition is continued, by consent of the parties by their solicitors, and with the assent of the commissioner, until to-morrow morning, 9 o'clock. 11th December, 1854.

THOS. A. R. NELSON, *Sol. for Compl'ts.*
GEO. W. ROWLES, *Sol. for Resp.*
JOHN H. PAYNE, *Com.*

Tuesday morning, 9 o'clock, 12th Dec., 1854. Cross-examination of J. C. Tipton resumed.

13th Interrogatory by compl't. What relationship existed between J. A. Lea and Luke Lea, the Entry Taker, and who were the agents or assistants of the Entry Taker in his office, both before and after as well as on the 5th and 15th April, 1842?

Answer. J. A. Lea was said to be the son of Luke Lea, above referred to, and was one of the clerks in the land office, both before and after, and on the 5th and 15th of April, 1842, as well as I now recollect, F. W. Lea and Wm. Park Lea, the sons of the said Luke Lea, were also clerks in said office at the times referred to.

14th Int. by same. Please examine the original locations now in the Entry Taker's office, and now here shown to you—being numbers 5703 in the name of John Martin; 5818 in the name of John Martin; 7849 in the name of Euclid Waterhouse; 7653 in the name of James Parsons, and 5446 in the name of William P. Lea, and state whether or not it is your opinion that all of said locations are in the same handwriting, and if so, in whose handwriting do you believe them to be.

Answer. I have examined the locations above referred to, and believe them all to be in the same handwriting and to be the handwriting of J. A. Lea.

15th Int. by same. Please state whether or not you have seen J. A. Lea write; if so, whether frequently or seldom. State, also, if you acquired a knowledge of his handwriting in any other mode, and how.

Answer. I have seen J. A. Lea writing frequently, and have issued grants from certified copies of entries filled up by him whilst clerking in the Entry Taker's office.

16th Int. by same. Will you please state the numbers and dates of the various entries upon which the grants—mentioned in the 15th interrogatory of defendants and your answer thereto—were issued, as said numbers and dates are shown in the books containing records

of grants referred to in said interrogatory, and which are now before you?

Answer. Grant No. 5599 is made upon entry No. 7499, dated 28th April, 1842. Grant No. 5701 is made upon entry No. 7145, dated 15th April, 1842. Grant No. 6251 is made upon entry No. 6115, dated 5th April, 1842. Grant No. 6252 is made upon entry No. 6401, dated 5th April, 1842. Grant No. 6253 is made upon entry No. 6357, dated 5th April, 1842. Grant No. 6254 is made upon entry No. 6354, dated 5th April, 1842. Grant No. 6255 is made upon entry No. 6626, dated 5th April, 1842. Grant No. 6256 is made upon entry No. 6368, dated 5th April, 1842. Grant No. 6257 is made upon entry No. 6288, dated 5th April, 1842. Grant No. 6259 is made upon entry No. 6986, dated 15th April, 1842. Grant No. 6261 is made upon entries Nos. 6334, 6340, dated 5th April, 1842. Grant No. 6262 is made upon entries Nos. 6376, 6400, 5th April, 1842. Grant No. 6263 is made upon entries Nos. 6341, 6344, dated 5th April, 1842. Grant No. 6264 is made upon entries Nos. 6982, 6985, dated 15th April, 1842.

17th Interrogatory by same. From an inspection of the books and papers now in the office, please state how many entries were made in the Entry Taker's office on the 5th April, 1842.

Answer. From an inspection of the record or memorandum book of said Entry Taker's office, I find that said book shows that one thousand four hundred and thirty-four entries were made upon the day above referred to.

18th Interrogatory by same. How many of those entries, made on the 5th April, were made in the name of William Park Lea, and how many in the name of William P. Lea as appears from the memorandum book shown to you by the defendants, and marked on the lid "Fran's W. Lea, B, and marked on the first page inside, "Day Book?"

Answer. By examination of the record or memorandum book of the Entry Taker's office, I find nine entries. No. as follows, marked to William Park Lea, viz., Entry No. 5446, which was entered on the 5th of April, 1842, and Nos. 6983, 6984, 6985, 6986, 6987, 6988, 6989, 6990, dated the 15th April, 1842; and I find from the same book twenty entries marked to William P. Lea, as follows: Entries No. 6115, 6288, 6334, 6340, 6344, 6354, 6357, 6368, 6376, 6400, 6401, 6634, which was entered on the 5th of April, 1842, and Nos. 6982, 6991, 6992, 6993, 6994, 6995, 6996, 6997, all dated the 15th April, 1842.

19th Interrogatory by same. Will you please trace the entries referred to in your last answer through the three Record or Entry Books, A, B, C, mentioned in my second cross-interrogatory, in which the entries were recorded at length, and show in whose name each of said entries was recorded at length in said books, giving *the letter* or description of each book in which the same are recorded.

Answer. I find in Book A, Entry No. 5446, marked to William P.

Lea; in Book B, I find Entry No. 6983, 6984, 6985, 6986, 6987, 6988, 6989, 6990, marked to William Park Lea without erasure, and I find Entries Nos. 6991, 6992, 6993, 6994, 6995, which seem to have been in the name of William Park Lea, originally, and since the letters ark appear to have been scraped out with a knife, leaving the name William P. Lea on said records; in Book A, I find Entry No. 5446 marked to William P. Lea without erasure; I find in Book B, Entry No. 6115, marked to John B. and Thos. W. Maston, which appears originally to have been in the name of William Park Lea, judging from the traces of the original letters and space for the name between said traces, it appears that the name of William Park Lea has been scraped out with a knife and the name of John B. and Thos. W. Maston written over the same place. Entry No. 6288, 6334, 6340, 6344, 6354, 6357, 6368, are all in the name of William Park Lea and without erasure. No. 6376 is in the name of Francis W. Lea. No. 6400, 6401, 6634, 6982, 6996, 6997, are all in the name of William Park Lea without erasure.

20th Interrogatory by same. Please examine the original locations now submitted to you, and taken from the files of the Entry Taker's office (in which office your deposition is now being taken), and state the numbers and dates of the locations, and how many are in the name of William P. Lea; how many in the name of W. P. Lea, and how many in the name of William Park Lea.

Answer. The following locations are in the name of William P. Lea:—

No. 5446, dated 5th April, 1842.
" 6376, " 5th " "
" 6983, " 13 or 15th April, 1842.
" 6984, " 13 or 15th " "
" 6986, " 15th " "
" 6991, " 15th " "
" 6993, " 15th " "
" 6994, " 15th " "
" 6995, " 15th " "
" 6996, " 13 or 15th " "
" 6997, " 13 or 15th " "
" 7147, " 15th " " } Marked on the back, conflict on 40 acres.
" 8857, " 18th June, 1846.
" 9001, " 5th May, 1853.
" 9007, " 5th " "
" 9011, " 5th " "
" 9003, " 5th " "

No. 6922 is in the name of Wm. P. Lea, and dated the 15th April, 1842. The following locations are in the name of William Park Lea:—

No. 6340, dated 5th April, 1842.
" 6341, " 5th " "
" 6368, " " " "
" 6400, " " " "
" 6344, " " " "
" 6354, " " " "
" 6625 and 6626, dated 5th April, 1842.
" 6634, dated 5th April, 1842.
" 6357, " " " "
" 6288, " " " "
" 9008, " 5th May, 1853.
" 9006, " " " "
" 9012, " " " "

No. 8846, without date, for 80 acres, and has on the back William P. Lea. Grant No. 6463, is to be changed so as to fit this location, and is on the face William Park Lea. The following are also in the name of William Park Lea:—

No. 9024, dated 12th May, 1853.
" 8998, " 5th " " and the letters ark seem to have been subsequently added to the P, where the said letters occur in the name.

No. 9023 is also in the name of William Park Lea, dated 12th May, 1853. The following locations are also in the name of William Park Lea:—

No. 9000, dated May 5th, 1853.
" 9017, " " 12th, "
" 9019, " " " "
" 9009, " " 5th, "
" 9002, " " " "
" 9005, " " " "
" 9004, " " " "
" 9016, " " 12th, "
" 9022, " " " "
" 9010, " " 5th, "
" 9018, " " 12th, "
" 9026, " " " "
" 9025, " " " "
" 8999, " " 5th, " { With the letters ark subsequently added to the letter P.
" 9021, " " 12th, "
" 8997, " " 5th, "
" 9020, " " 12th, "
" 7499, " Ap'l 30th, 1842. { With the letters ark subsequently added to the letter P.
" 7382, " " 19th, "

The following are in the name of W. P. Lea:—

No. 8861, dated Sept. 10th, 1846.
" 6982, " April 15th, 1842.
" 6985, " " " "
" 6987, " " " "
" 6988, " " " "
" 6989, " " " "
" 6990, " " " "
" 7145, " " " "

21st Interrogatory by same. Please examine the certified copies of entries, now on file in the Entry Taker's office, and now shown to you here in the office, and state how many of them (with the numbers and dates), are in the name of William Park Lea, and how many in the name of William P. Lea, and what alterations, if any, appear to have been made in any of said certified copies.

Answer. On examination, I find certified copy, No. 6993, in the name of William P. Lea, which seems to have been first William Park Lea, the letters ark being subsequently scraped out; date of entry, 15th April, 1842.

No. 6634, dated 5th April, 1842, William P. Lea.
" 8843, " 16th Oct'r, 1844, " "
" 8846, " 18th " " " "

The following are in the name of William Park Lea:—

No. 6288, dated 5th April, 1842.
" 6368, " " " "
" 6376 & 6400, " " " "
" 6401, " " " "
" 6334 & 6340, " " " "
" 6357, " " " "
" 6341 & 6344, " " " "
" 6354, " " " "
" 6626, " " " "
" 6987, 6988, 6889, 6990, dated 15th April, 1842.
" 6996, dated 15th April, 1842.
" 6984 & 6997, " " " "
" 7499, " 28th " "
" 8846 & 8847, " 5th March, 1846, assigned.
" 9025, " 12th May, 1853.
" 9024, " " " "
" 9026, " " " "
" 9009, " 5th " "
" 9010, " " " " William Park Lea.
" 9003, " " " "
" 8848 & 8849, " 13th June, 1846, { William P. Lea, assigned.
" 8890, " 16th Sept. " " "

by William Park Lea to Patrick Graham, Sept. 28th, 1847.

No. 8861, dated 10th Sept. 1846, assigned by William P. Lea to Jacob Lingerfelt, 26th Nov. 1846.

No. 8999, dated 5th May, 1853, William P. Lea.

22d Interrogatory by same. Will you please turn to Grant Books J and K, in which you recorded grants while you were Register of the Ocoee District, and classify them so as to show what grants are there recorded in the name of William P. Lea without erasure; in the name of William Park Lea, with the letters "ark," in Park, erased with a pen or scratched out with a knife; and those to William Park Lea recorded in his name at full length?

Answer. The four following records of grants are in the name of William P. Lea, grant No. 6215 on entry No. 6993; grant No. 6216 on entry No. 6994; grant No. 6217 on entry No. 6995; grant No. 6219 on entry No. 6991 are without erasure. The following were originally in the name of William Park Lea and altered from William Park Lea to William P. Lee by crossing out the letters ark after the letter P, viz., Grant No. 5764 in Book J, on entry No. 6983; No. 6218 on entry No. 6992 in Book K is erased with a pen where the letters ark occurs in the name in the second and fourth places leaving those two places to read William P. Lea, and where the name first occurs it reads William Park Lea, and in the third place it was written William P. Lea, in the record, and so remains. The two following records of grants were originally in the name of William Park Lea, and the letters ark after the letter P, in the name, seem to be subsequently erased with a knife, viz., No. 6258 on entry No. 6996, & No. 6260 on entries Nos. 6984 & 6997; the grants to which the letters ark have been added have already been described in a former part of my deposition, viz., No. 5744 in Book J, and No. 6250 in Book K. The following grants are in the name of William Park Lea, written at length and without any erasure in the name; grant No. 5701 on entry No. 7145; grant No. 5765 on entry No. 7382; grant No. 5766 on entry No. 7147, in Book J; grant No. 6251 on entry No. 6115; grant No. 6252 on entry No. 6401; grant No. 6253 on entry No. 6357, No. 6254 on entry No. 6354, No. 6255 on entry No. 6626, No. 6256 on entry 6368, No. 6257 on entry 6288, No. 6259 on entry No. 6986, No. 6261 on entries Nos. 6334 & 6340, No. 6262 on entries Nos. 6376 & 6400, No. 6263 on entries No. 6341 & 6344, No. 6264 on entries No. 6982 & 6985, No. 6265 on entries Nos. 6987, 88, 89, & 90; there may be other grants belonging to the above classes to which my attention has not been called.

23d Interrogatory by same. Please examine the Entry Book A, in which the entries were recorded at length, and Grant Book L, in which the grants were recorded, and state when and by whom entry No. 5447 was made, and when and to whom the grant upon said entry was issued.

Answer. I have examined Book A, referred to, and find the record as follows, viz: No. 5447, William Grant enters as general enterer

one hundred and sixty acres of land, being of the northwest quarter of section eighteen, in fr. township four so., and range five east of the basis line in the Ocoee District, beginning at the northwest corner of said quarter section. Entered at one cent per acre, April the 5th, 1842. It appears from Book L, referred to, that grant No. 6696 was issued upon entry No. 5447, issued to George M. Coleman, assignee of William Grant, on the tenth day of August, 1849.

It is agreed that the further taking of this deposition shall be postponed until to-morrow morning, nine o'clock, the parties, by their solicitors and the commissioner, hereby assenting thereto, 12th December, 1854.

THOS. A. R. NELSON, *Sol. for Compl't.*
GEO. W. ROWLES, *Solit. for Resp.*
JOHN H. PAYNE, *Com'r.*

Wednesday Morning, 9 o'clock.

Cross-examination of J. C. Tipton resumed, 13th Dec'r, 1854:—

24th Interrogatory by compl't. How far do you suppose the land entered by Wm. Grant, in the above entry No. 5447, is distant from the land in dispute covered by entry No. 5446?

Answer. I suppose the above entries alluded to in the last question to be about miles distant apart.

25th Interrogatory by compl't. Look to the map of the Ocoee District now on file in the Entry Taker's office, and any other sources of information in the office, or within your knowledge, and state how far the land now in dispute (covered by entry 5446) is east of the basis line in said district?

Answer. By examination of the map of Ocoee District I find the distance above referred to to be about twenty-seven miles east of the basis line.

26th Int. by same. How many entries (not counting the entry in dispute as one) did William Park Lea make east of the basis line, and how many west, on the 5th April, 1842?

Answer. Entry No. 6115, as shown in Book B, sometimes called a memorandum book, is in the name of William P. Lea, but the record of locations founded on the same entry shows the name to have been William Park Lea, and afterwards changed to John B. and Thos. W. Mastin; but the record of grant No. 6251, upon the same entry, shows that the grant issued to William Park Lea, on the 8th Dec'r, 1842, and is east of the basis line. Entry No. 6288, as shown in Book B, sometimes called a memorandum book, is in the name of William P. Lea, but the record of location of the same entry shows the name of William Park Lea; but the record of grant No. 6257, upon the same entry, is in the name of William Park Lea, and is west of the basis line. No. 6334 and 6340, in Book B, sometimes called a memorandum book, are both in the name of William P. Lea, and in Book B, a record of locations shows the name of William Park Lea; and the record of grant No. 6261, upon said entries, are in the name of William Park Lea, and is west of the basis line. No.

6341, 6344, in Book B, sometimes called a memorandum book, is in the name of William P. Lea, and in Book B, a record of locations, the name is William Park Lea; and the record of grant No. 6263, upon said entries, is in the name of William Park Lea, and is west of the basis line. No. 6354, in Book B, sometimes called a memorandum book, is in the name of William P. Lea; in Book B, a record of locations, it is William Park Lea, and the record of grant No. 6254, upon the same entry, it is in the name of William Park Lea, and is west of the basis line. No. 6357, in Book B, sometimes called a memorandum book, is in the name of William P. Lea; in Book B, a record of locations, it is William Park Lea, and the record of grant No. 6253, upon the same entry, is the name of William Park Lea, and west of the basis line. No. 6368, in Book B, sometimes called a memorandum book, is in the name of William P. Lea; in Book B, a record of locations, it is William Park Lea, and the record of grant No. 6256, upon the same entry, shows the name of William Park Lea, and is west of the basis line. No. 6376, in Book B, is in the name of William P. Lea; in Book B, a record of locations, it is in the name of Francis W. Lea, and the record of grant No. 6262, upon the same entry, shows the name of William Park Lea, and is west of the basis line. No. 6400, in Book B, first referred to, is in the name of William P. Lea; in Book B, a record of locations, it is William Park Lea, and the record of grant No. 6262, upon the same entry, is William Park Lea, said grant covers both entries herein mentioned, and is west of the basis line. No. 6401, in Book B, first mentioned, is in the name of William P. Lea; in Book B, a record of locations, it is in the name of William Park Lea, and the record of grant No. 6252, upon the same entry, is in the name of William Park Lea, and is west of the basis line. No. 6634, in Book B, first referred to, is in the name of William P. Lea; in Book B, a record of locations, it seems first to have been William P. Lea, and the letters ark afterwards added to the capital P, making it now read William Park Lea, and the record of grant No. 6250, upon the same entry, seems to have been first William P. Lea, and the letters ark subsequently added wherever the name occurs, making it now read William Park Lea, and is west of the basis line. The above answer contains all the entries, as appears from the books, to have been made by William P. Lea or William Park Lea, on the 5th of April, 1842, except the eighty acres in dispute.

27th Interrogatory by same. Turn to the map or plan of Ocoee District, now on file in this office, and state, if you please, how many entries, *in all*, were made in the name of William P. Lea or William Park Lea, in fractional township 4 south, and range 5 east of the basis line, as appears from the face of the map, copy the name from the map and state in whose handwriting they appear to be from the map.

Answer. Upon examination of the map I find the name of Wm. P. Lea upon the east half of the southwest quarter of section 15, in frac-

tional township 4 so., and range 5 east of the basis line, and in the handwriting of one of the sons of Luke Lea, but as to which one of them I am not able to say, from the appearance of the same. I find also the name of William Park Lea upon the southwest corner of the southeast quarter of section 21, in the same township and range before mentioned, and, as I believe, in the handwriting of William Park Lea. I find also the name of Wm. Park Lea on the east half of the southwest quarter of section 22, in the same township and range, which handwriting I am not able to designate more than to say that I believe it to be the handwriting of one or the other of Luke Lea's sons. I find the name of Wm. Park Lea also on the northwest fractional quarter of section 24, in the same township and range, and, as I believe, in the handwriting of William Park Lea, also upon the northeast fractional quarter of same section, township, and range. I find also the name of William Park Lea opposite the northeast fractional quarter of section 29, there not being room for the name upon said fractional quarter, and in the handwriting of William Park Lea, as I believe; and these are all that appear from said map at this time.

28th Int. by same. Please state whether the northwest quarter of section 22, which now has the following words written on the map now before you (being the original map representing range 5 east, fractional township 4 south), to wit: "James Davis—Gen'l E., 1 ct.," does not appear upon its face to have been originally divided by lines, and also to have been written upon over the greater part of the quarter section represented. And does not that writing appear to have been scratched out with a knife, and the name "James Davis" and the words "Gen'l E., 1ct.," to have been written over the part erased?

Answer. I have examined said quarter section described in the above question, and find that said quarter has been so scratched out and written over, and appears also to have been once divided; and it also appears to have had some name upon it, previous to the scraping out, where the name of James Davis now appears.

29th Int. by same. Does entry No. 6115, described in your answer to my 26th interrogatory, cover any part of the land described in your last answer above?

Answer. It does not, as appears now from the location-book; but as it appears from book K, a record of grants, it does cover the east half of said quarter, and contained in grant No. 6251, upon entry No. 6115.

30th Int. by same. Are there sufficient traces of the original name remaining on entry book B, in the entry No. 6115, to enable you to say with certainty whether the original name was William P. Lea or William Park Lea, and on what ground is your conclusion (stated in your answer to my 26th interrogatory) that it was William Park Lea founded? May not the name erased have been William P. Lea, as it is in both memorandum-books now before you?

Answer. My opinion in regard to the original name in location No. 6115 is founded upon the traces of the original name, and the spaces from one capital letter to another, which gives sufficient room for the name of William Park Lea, as well as the general appearance of the original marks. It may possibly have been William P. Lea, but does not so appear to me.

31st Int. by same. In whose handwriting do you believe the entry in book B, of No. 6115, as it now stands altered, to be? The book to which I refer is book B, containing record of entries at full length, and the names as they now stand are John B. and Thos. W. Maston, as herein before described by you.

Answer. I believe the record of said location above referred to in book B of locations to be in the handwriting of Francis W. Lea.

32 Interrogatory by same. In whose handwriting do you believe the figures "47" and the words "*and north half of the northeast,*" which you say you did not write in recording grant No. 5744 in book J, to be?

Answer. I believe No. 47 above alluded to, and the and north *half* of the northeast, to be in the handwriting of Francis W. Lea.

33 Interrogatory by same. Turn to the grant-books (or books containing records of grants) now in the office, and state, as nearly as you can, the aggregate number of grants recorded by you while you were in office as Register of the *the* Ocoee District.

Answer. Whilst I was Register there were two thousand five hundred and thirty-five grants recorded, and the greater part of them were recorded by myself, and whilst I was Register of Ocoee District.

34 Int. by same. Were the grants recorded before or after they were returned from the seat of government with the signatures of the Governor and Secretary of State?

Answer. They were not recorded usually until after they had returned from Nashville with the signatures of the Governor and Secretary of State.

35 Int. by same. Is not the last grant recorded by you in book J, in the name of William Park Lea, previous to the record of the grant now in controversy—*grant No.* 5701—and are there not 43 grants *to other persons* recorded by you in said book between No. 5701 and No. 5744, the grant for land now in dispute? And how many grants were recorded by you, which were issued to other persons than William P. Lea or William Park Lea, immediately succeeding No. 5744, and before you recorded the next grant in the name of either of those persons? Does not grant 5744 stand recorded on the *on the* grant-book "solitary and alone," and not in connection with any of the other grants to either of said parties?

Answer. The last grant issued by me in the name of William Park Lea, previous to the one in dispute, was issued on the 21st August, 1842, and the one in dispute bears the same date, the former being No. 5701 and the latter No. 5744, and are recorded according to No.; and there are forty-three grants between said Nos., issued to

other persons, and recorded in said book between said Nos.; and from No. 5744 to 5764, the next No. in the name of William P. Lea, there are twenty grants issued in the names of other persons, and recorded in book J, and between said Nos.

36th Int. by same. You have, in a former part of your deposition described grant No. 5764 as being recorded in the grant-book originally in the name of William Park Lea, but now standing in the name of William P. Lea, with the letters "ark" stricken out with a pen. Please state if the two grants immediately succeeding No. 5764 in book J, being numbers 5765 and 5766, are not recorded in the name of William Park Lea, at full length, and without erasure or interlineation.

Answer. The two records of grants next following No. 5764 are in the name of William Park Lea, and without any erasure or interlineation.

37th Int. by same. Are not the entries recorded in numerical succession in the entry-books, and are not the grants recorded in the numerical succession of the grants in the grant-books, and is not the numbering of the entries different from the numbering of the grants?

Answer. The entries and grants are both recorded in numerical succession, but the numbering of entries are different, from the fact that the certified copies come to the register's office in promiscuous numbers.

38th Int. by same. When and by whom was grant No. 5744 first lifted from the office, and do you know who has since had it in possession?

Answer. I do not recollect as to who it was that lifted the particular grant mentioned in the question, neither do I know as to whose hands it has been in since until a few weeks since, when it was shown to me by Thomas H. Calloway.

39th Int. by same. Was said grant shown to you by Mr. Calloway before or after the commencement of the suit, and how often was it shown to you by him or any other of the defendants between the commencement of the suit and the time of commencing your present deposition?

Answer. The grant above mentioned was not shown to me by Mr. Calloway or any other person, until after this suit was commenced, and until the latter part of Nov. last, and I have seen said grant but twice, as well as I recollect, until since the commencement of this investigation.

40th Int. by same. Have you any distinct or other knowledge or recollection of *the act* of writing the letters "ark" in the grant book, or the original grant now before you, aside from the appearance of the writing itself?

Answer. I have had no recollection of the alteration of said grant or book until since the commencement of this investigation, but within the *last day* or two I believe that I have an indistinct recol-

lection of something of the sort being done, but as to the time, or by whom, I have no recollection.

41st Int. by same. Does your memory serve you so as to enable you to state distinctly *the circumstances under which* said additions were made?

Answer. I do not recollect as to any particular grant or record, but it appears to me that William Park Lea and William Pinckney Lea had some misunderstanding in regard to some entries or grants, and it was done in order to correct them, and to make the distinction in the names.

42d Int. by same. If it was so done, do you remember whether it was done before or after the grant was recorded?

Answer. I do not recollect as to whether or not it was done before or after the grant was recorded, but the record of the grant being altered, and it being my practice to copy from the grant to the record book, I must believe it to have been done after recording it.

43d Int. by same. Can you state, aside from your *belief* founded on your practice, the time when, or the place where the alterations were made?

Answer. I cannot recollect as to the time, as it has been several years since, but I believe it to have been done in the register's office of which I was incumbent at the time.

44th Int. by same. Do you know why, if you made the alterations, you did not insert the letters "ark" in the name "Wm. P. Lea," endorsed on the back of the grant?

Answer. In backing and numbering grants, it was my custom where the names were lengthy, to merely put the initials of the given name, in order to have room, and that being my practice with all persons, I did not think it necessary to the title, and therefore left it as it now appears.

45th Int. by same. Has any change occurred in your handwriting since you made the entries in the grant book as register, and, if so, has it resulted from sickness—the use of a different kind of pen—or other cause?

Answer. My handwriting appears to be different in many places where it is to be seen, caused from different pens, the condition of my health, and sometimes from excitement of the nerves.

46th. At the time you recorded the grants of 1842 in books J and K, do not those books show that you then generally wrote a slanting sharp hand, and not a round hand?

Answer. My handwriting, at the time above referred to, was generally a sharp and running hand, especially when in the hurry of business, but at other times, it would frequently be round.

47th Int. by same. Are not the letters "ark" in the original grant, now in contest, in a round hand, very similar to the balance of the writing in the body of that grant, except that they appear to have been made with a pen making a fine stroke?

Answer. The letters ark, which appear to have been added to the

letter P in said grant, appear to be somewhat round, but do not appear to me to be similar to the filling up of the grant, nor to be the same handwriting; it seems, however, to have been written with a lighter hand.

48th Int. by same. Is Euclid Waterhouse, the person mentioned in your answer to defendants' fourth interrogatory, a defendant to this suit, or related to the defendants of that name?

Answer. Euclid Waterhouse, mentioned in my answer to defendants' fourth interrogatory, is, as I understand, one of the defendants to this suit.

The further taking of this deposition is continued by consent until to-morrow morning nine o'clock, 13th Decr. 1854.

THOS. A. R. NELSON, *Sol. for Compl't.*
GEO. W. ROWLES, *Sol. for Resp't.*
JOHN H. PAYNE, *Com'r.*

Thursday morning, 9 o'clock, 14th December, 1854. Met pursuant to adjournment, and cross-examination of J. C. Tipton resumed.

49th Int. by same. Are not the words "*and north half of the northeast,*" which appear to have been interpolated in the grant book, in the record of grant No. 5744, written in a round hand?

Answer. The words above alluded to in the question are written in a round hand.

50th Int. by same. Are not the letters "ark," which you say appear to you to have been written by you in the record of grant No. 5744, in the grant book, in different ink, and much smaller and finer writing than the balance of the record of that grant?

Answer. The letters ark, in record of grant No. 5744, and which seems to have been added in after the filling up of said record of grants, has been written, as I believe, with different ink from the filling up first done, and is in a more fine and smaller hand than the balance of said record of grant No. 5744.

51st Int. by same. Where the words William Park Lea occur at the foot of exhibit A to your deposition (that exhibit being the copy made by you from the grant book of grant No. 5744), and immediately preceding the printed words in said copy—"Hath title to the above described land"—does that copy, in that name, contain a *fac simile* of the name as it now appears on the grant book? Is not this a more correct representation, thus, William P. Lea? If this does not approach it nearer, represent it as nearly as you can.

Answer. I do not consider the above representation as good as the one referred to in exhibit, but the representation in exhibit A is not a complete fac simile, and which is very difficult to make owing to the peculiarity of the scratching out or defacing of said letters, but I will here exhibit as near as I can a fac simile of said record where the name occurs of the enterer in the last place in the last part of said record as follows, viz., William P. Lea.

52 Int. by same. Would it not be a much easier matter for an

experienced *pensman* or scrivener to forge or counterfeit the letters "ark," both in the grant book and original grant, than a page, or other considerable quantity of your writing, and as you have no distinct recollection of having written them, may you not be mistaken in the opinion that you wrote them? and may not any man be mistaken as to his own handwriting?

Answer. It would in my opinion be a much easier matter for an experienced pensman or scrivener to forge or counterfeit the letters "ark" both in the grant book and original grant, than a page or other considerable quantities of my handwriting, and I may possibly be mistaken in my opinion that I wrote them, and I suppose that any man might be mistakened as to his own handwritting, but from its general appearance and upon a close examination of those letters I feel satisfied in my own mind that I am not mistakened in said opinion.

53 Int. by same. Were you so satisfied at the time when Mr. Calloway first showed you the original grant for the land now in dispute in Nov. last, as stated in one of your former answers?

Answer. I was not.

54 Int. by same. What circumstances have changed your opinion or caused you to form an opinion? Has it been owing to an inspection of the papers, or to conversations with any of the parties to this suit, or others, and if the latter, who were the persons with whom you conversed, and what was said?

Answer. My opinion in regard to the matter referred to in the above question has been changed, from an examination of the books and papers connected with this matter, finding them in a different condition from what they were at first represented to me, and from a knowledge of my own handwriting.

55 Int. by same. Has not Thomas H. Calloway, one of the defendants, had frequent private conversations with you since we commenced taking your deposition, and, if so, state whether, in any of those conversations, he attempted to refresh your memory as to William P. Lea and Wm. Park Lea coming to you with their grants to have them corrected, and if so, what did he say on that subject?

Answer. Thomas H. Calloway has been in company with me alone but twice since the commencement of this deposition as I now remember, and I do not remember that he mentioned the subject above referred to during the conversations at those times.

56 Int. by same. Did William Pinckney Lea, the complainant, visit you at your house in Morganton, Monroe Co., T., on or about the 15th July last, to obtain any information in regard to his case, and did he or not in the course of conversation, mention that he understood the letters "ark" were added on the grant book, and did you not say to him that it could not have been done by you, because when you were first elected Register (being then at Nashville), Luke Lea, the Entry Taker, went to a book store, bought an *erasing* knife and *pounce* box, and instructed you, that, when in writing in the

books a mistake was made, not to scratch it out with a pen, but to erase it with the knife and rub the pounce on it, and write over it, and that you had adhered to that rule? If this was not the conversation, state it as well as you remember it.

Answer. William Pinckney Lea did visit me at my house in Morganton about the time referred to, and represented to me that the letters "ark" had been added to the letter P in the record of the grant for the land in dispute, and also that some scratching out had been done upon the same record with a pen, and which appeared to have been done since the recording of said grant in a different handwriting, and with different ink from that of the original filling up of said record, to which I replied that it was my custom to scrape out mistakes with a knife which I had purchased for that purpose, and putting pounce upon the place scraped out I would write over the same place, and that I did not believe that I had done it, but that I would not nor could not say positively that I did not do it until I would examine the books and records concerning it, and I was somewhat influenced to make that remark from his representation that he had made a few entries about Duck Town in order to have a claim to the range, and that William Park Lea had no entry or entries near that place, and he did not inform me that those other entries were changed which I find upon the record by examination; nothing was said about Luke Lea giving me any instructions; said conversation was at the instance of William Pinckney Lea, having visited me for that purpose, as he said he also represented that said addition of the letters "ark" did not look like my handwriting in the same book.

57th Int. by same. Did the complainant Wm. Pinckney Lea again see you at your father's, on or about the 23 Aug. last, and make an appointment to meet you at Cleveland on the 26th Aug., to examine the books? Did you agree to meet him at that time, for that purpose? Did you meet according to appointment? If not, why? And while he was at your father's, did you not say to him that if the letters "ark" were *crowded* into the record, you could not have done it?

Answer. William Pinckney Lea did see me at my father's house about the time referred to, and I told him that I thought I could meet him at Philadelphia on the Saturday morning following; and would go down to Cleveland with him, as I would have to go down before long anyhow, on other business; but not feeling well enough, and my wife being without any white person to stay with her, except our little son, I concluded not to make the trip at that time, and about the same conversation took place at that time that was had at Morganton in his other visit. I did not at any time affirm to him that I positively did not alter said record, but in both conversations, I told him that I must see the books and papers first, and hence the agreement to go to Cleveland.

58 Int. by same. Do you remember whether or not Wm. Pinckney Lea, while you were in office as Register, applied to you for his

grants? Did he get them? If not, why? Do you recollect whether he, in person, ever lifted any of his grants from the office while you were Register, and if so, when?

Answer. I have an indistinct recollection of William Pinckney Lea saying something to me about a grant or grants, and wished to get them, and I think my reply to him was, that I had a good many grants at Nashville, and expected his was of the number, but I do not remember that he ever lifted any grants from my office.

59th Int. by same. Did you say at Cleveland, on or about the 23 October last, in the presence of, or in conversation with, James A. Ruble, that you knew nothing as to when or by whom the alterations were made in the record of grants and original grant for the land in dispute? Did you say so, in that, or any other conversation at Cleveland, with, or in the presence of said Ruble, since the 23d October last?

(The respondents, by their solicitor, object in law to the above question: Because the matter of the question seems propounded with the view of impeaching the witness with reference to facts not growing out of the examination in chief, but distinctly, and solely brought out by the cross-examination, and as to such facts it is insisted, the witness must be regarded as the witness of complainant's.

This objection is overruled by the Commissioner, and the respondents appeal from such overruling to the hon'l Court.)

Answer. I believe the conversation above referred to did take place in a conversation with James A. Ruble, and also to Col. Sam'l Williams, in the presence of said Ruble, at a subsequent time, but I remarked in both these conversations, as well as I remember, that if I did not do it, the one who did it could counterfeit my handwriting a little better than I had ever seen it done, and that I might have done it, as the handwriting looked precisely like my own, but this conversation was since the 23d of October last, as I believe, and before the 23d of November.

60th Int. by same. Will you please measure and describe the two books which, in your examination, I have called memorandum books, and state whether those memorandum books come down to the present time, or extend as far as the books I have called entry books? Please also measure and describe all the books now in the office, in which the entries are recorded at full length, and state how they are bound in comparison with the memorandum books.

Answer. There is a book in the Entry Taker's office, which seems to be a record of the enterers' names, the kind of entry, price per acre, and amount of money received, which has not been described as yet in the course of this investigation; said book contains enterers' names, kind of entries, &c., from No. 1 to 5195; said book is 12 inches and nearly $\frac{1}{8}$th in length, 8 inches wide, $1\frac{1}{4}$ inches in thickness, and bound with paceboard or paper; book B, described in one of my answers, and which is marked on the back Fran's W. Lea, contains a similar record of the book above mentioned, com-

mencing at No. 5196, being the next number following 5195, the last No. contained in the book above described, and continues said Nos. up to No. 8028; said book B is 1 foot and $\frac{3}{4}$ of an inch in length, $8\frac{1}{4}$ inches wide, and a fraction over half an inch in thickness; book marked day book C contains similar records, but commences with No. 4112, continuing to No. 6752; said book C is $12\frac{1}{2}$ inches in length, $8\frac{1}{4}$ inches in width, and one-half inch in thickness; both of the last named books are bound in paceboard or paper, backs and corners in sheep; said books do not come down to the present time, neither do they extend as far as the books called entry books by plaintiff, and alluded to above; books A, B, C, D by measurement are 12 inches in length, 8 inches wide, and $1\frac{1}{4}$ inch thick, and bound in paper or boards, and backs and corners in sheep; the books alluded to in the above question in which the entries are recorded at full length, are two in number, bound in calf, one of them having on the back the words "record book" in gilted letters, the other one having the words "entry book, Ocoee District," also in gilted letters, one of them being in length 17 inches, in width 12 inches, and near 3 inches thick; the other one is also 17 inches in length, 12 inches wide, and $2\frac{1}{4}$ inches in thickness; said books contains the No. of entries up to No. 4342, and are written in manuscript, the other entry books being in printed forms, and continuing the entries at length from No. 4343, with which it begins, up to No. 9065, including a No. of blanks not filled out; the books last named, are A, B, C, D, above mentioned.

61st Int. by same. In whose handwriting are the words "William Park Lea" in the two memorandum books, opposite to the number of entry 5446?

Answer. The name William Park Lea opposite said No. 5446 in book B, I take to be in the handwriting of William Park Lea, and in book C, I think it is in the handwriting of Francis W. Lea.

62 Int. by same. Were the original locations *generally* made in manuscript, and filed without being signed by the enterer?

Answer. The original locations were, as I understand, both in manuscript and in printed forms, as to the majority I cannot say. Some of the locations were signed by the enterer and some were not, but the name of the enterer always appeared in the location and at the top of said location.

63 Int. by same. What is meant by "the basis line" mentioned in the entry books and grants for lands in the Ocoee District?

Answer. The basis line was a line required by law to be run, commencing at a point on the south side of the Hiwassee River, and opposite the main street of Calhoun, in McMinn County, running south 20° west to the Georgia line, upon which the other lines of survey were based.

64 Int. by same. Was it usual for enterers to take receipts from the Entry Taker for moneys paid for lands after the price was reduced to one cent per acre?

Answer. So far as I was acquainted with the customs of the Entry Taker's office it was generally done.

65 Int. by same. How far is it from "Savannah Farm" where Caswell Lea lived on the 5th April, 1842, to the land in dispute in this case?

Answer. I suppose it to be some twenty-five or thirty miles from the Savannah farm to the lands in dispute.

66 Int. by same. Please examine the papers now shown to you and hereto annexed and made part of this deposition, endorsed as follows: "copy of grant No. 6605 to William Park Lea, assignee of Francis W. Lea, on entry No. 8739, dated Oct., 1842, Exhibit No. 1," and compare said copy with the original record of said grant now before you in the Entry Taker's office, in grant Book L; and also examine and compare the paper now shown to you and hereby made part of your deposition, endorsed "copy of certified copy of entry No. 8739, and the assignments endorsed thereon, Exhibit No. 2," with the original certified copy of entry No. 8739, now on file in the Entry Taker's office, and state whether said exhibits No. 1 and No. 2, are true copies from the original; whether the land described in them, or either of them, is the land now in dispute; and whether the entry at length in Entry Book D, now in the office, and now before you, of entry No. 8739, corresponds with the recorded grant; and, if not, in what respect does it differ? State, also, in whose handwriting you believe the filling up of the original certified copy and recorded entry to be, and whether either of the memorandum books embraces said entry?

Answer. I have compared copy of grant No. 6605, referred to in the question, and find it to be a true copy of the same. I have also compared copy of certified copy of entry No. 8739, with the assignments thereon, Exhibit No. 2, with the original certified copy, and find it to be a true copy of the same, and find that the copy of the record of grant No. 6605 covers the land now in dispute; it does not agree with the copy of location in Book D, referred to in the question. Said copy in Book D calls for the west half of the quarter section, and the copy of grant No. 6605 calls for the east half, being both the same in all other respects. I believe the original certified copy of said entry to be in the handwriting of Francis W. Lea, and also the record of grant No. 6605, and is not contained in either of the Books B and C, called memorandum books by the plaintiff.

67th Int. by same. Please examine the papers hereto annexed, marked "copy of grant No. 7008, to Allen Thurman, as entry No. 8739, Exhibit No. 3," and state whether the same is a true copy from Grant Book L now before you in the Entry Taker's office? And state whether or not Exhibit No. 3 covers the same land that is described in Exhibit No. 2 to your last answer, and in entry No. 8739, in the name of Francis W. Lea, referred to in your last answer as being recorded at length in Entry Book D?

Answer. I have examined the papers above referred to in question

marked copy of grant No. 7008, to Allen Thurman, on entry No. 8739, Exhibit 3, and find said copy to be a true copy of the same as recorded in Book L referred to, and it also agrees with and covers the same land described in Exhibit 2, referred to in my last answer before this. The original certified copy has marked upon it No. of the grant according to my custom on the right hand corner, No. 7008, and said original certified copy has been transferred by Fran's W. Lea to John McCoy, and by said McCoy to Allen Thurman.

Re-examined by Respondents' Solicitors.

1 Interrogatory. You will please examine the plan of the Ocoee District on file in the Entry Taker's office, and now before you. You will please state if, on each piece of land as there laid down, the enterer's name is written; and if so, what name is placed on said plan as having entered the land described by grants Nos. 6257, 6264, 6263, 6254, 6253, 6256, 6262, 6252, and 6250. You will please state also from the grant when said land appears to have been entered.

Answer. I have examined said map and find, marked to grant No. 6257, the name of Will. P. Lea. Upon entry No. 6288, the 5th April, 1842, to No. 6264, I find the name of W. P. Lea, and the name Park Lea seems to have been put upon the same land subsequently to the first name written, being upon entry No. 6985 in the same grant. Upon entry No. 6982 I find written W. Park Lea, both dated 15th April, 1842, to grant No. 6263. Upon entries No. 6341 and 6344, written upon both, Wm. Park Lea, date of entry, 5th April, 1842, to No. 6254. Upon entry No. 6354, I find Wm. Park Lea, dated 5th April, 1842, to No. 6253. Upon entry No. 6357, I find Wm. Park Lea, date of entry 5th April, 1842, to No. 6256. Upon entry 6368, I find the name of Wm. P. Lea, entered 5th April, 1842, to No. 6262. Upon entry 6376 and 6400, I find the name of Wm. Park Lea. Upon No. 6400, and upon No. 6376, I find in the location book the name of Francis W. Lea, but for a different lot of land to that described in the grant; but in location book, and No. 6375, I find the name of William Park Lea, and covering the same land described in grant No. 6262, entry dated 5th April, 1842, grant No. 6252. Upon entry No. 6401, I find Wm. Park Lea, date of entry 5th April, 1842, grant No. 6250. On entry No. 6534, I find Wm. P. Lea, dated 5th April, 1842.

2d Int. You will please examine grants on grant book Nos. 6218, 6260, 6258, 6250, and 5764, and state if these are grants in which *ark* is scratched out, and which one, if any of them, is predicated on entries made on 5th of April, 1842.

Answer. Upon examination of said record book I find the letters ark scraped and marked out where they occur in the name in all of said records of grants, all of which bear date of entry the 15th of April, 1842, except No. 6250, in which the letters ark appear to have been added, and bears date of entry the 5th of April, 1842.

3d Int. You will please examine the plan of district and state if, from that, you can ascertain the locality of the lands in the grants where the letters *ark* are scratched out, as stated in your above answer; if so, are they in the neighborhood of what is called the Savannah farm formerly owned by Caswell Lea?

Answer. I have examined the map and compared it with the record of grants Nos. 6218, 6260, 6258, and 5764, and find them all to be in the neighborhood of what is called the Savannah farm, in Polk County; and also the record of grant No. 6250, which land lies in Hamilton County, and in the record of which the letters ark seems to have been added.

4 Int. When was the land covered by grant 6262 entered? give the No. of entry, and answer the same question in reference to grant 6264, and where is the lands situated.

Answer. By examination of the record of grants I find that said lands covered by grant No. 6262 was entered on the 5th day of April, 1842, and founded upon two entries, viz., Nos. 6376 and 6400, in the County of Hamilton, 2d range west, 4th township, 29th and 30th sections, being the northwest quarter of the 29th, and northeast quarter of the 30th section upon No. 6264. Upon two entries, Nos. 6982 and 6985, I find said land to be in Polk County, east of the basis line, and to be entered on the 15th of April, 1842.

5th Int. As to the books B and C, referred to in your answer to the 3d interrogatory on the cross-examination. Does not the day, year, and No. of entry, as well as the enterer's name, and number of acres of land, in said books, correspond with the books in which the locations for land are recorded at length, the only substantial difference being, that the local description of the land, by range, section, &c., is set out at length in the record book of locations? Are said books in the office with the other entry taker's books? Have you the same reason for believing them to be books belonging to the office, as the other books in the office? Is, or not, the name of Francis W. Lea, simply written on the side of the book B? Is there on, or about, book B, C, or their contents, anything that would induce you to believe either of them the private property of Francis W. Lea?

Answer. Books B and C, above referred to, seem to be books of index or record, containing the enterer's names, the number of acres entered, the number of the entry made, and the date of such entry, and amount of money received, and appear to correspond with the office books in which the entries names are written out at full length, describing the localities of the land, &c., except that in some cases it appears that the names are different, and in one place, or to one No. which is blank, where there should be a name in the books first referred to, I find to said No. in the books describing the entries in full, the name of the enterer, and in one other place the name of the entries does not agree, and there may be others; but the only substantial difference is the difference first described, the books first referred to, as I have stated in a former answer, seem to be on a copy

of the other in part, or one of them appear to contain more Nos. than the other; said books, B and C referred to, are in the office with the other books of said office, and I would consider one of them to be a necessary book to the office of entry taker; upon the side of book B is written the name of Frans. W. Lea (which in a former answer I called the back of it, considering the binding the back of the book), but I do not see anything about said books to induce me to think either of them to be the private property of Francis W. Lea, though he might have made one of them for that purpose for all that I know.

6th Int. Do the contents of said book, in any instance, relate to the private business of Francis W. Lea, or do the contents all relate to entries of land, without reference to entry by said Lea, more than to any other person?

Answer. Said books do not, as I can see, in any instance refer to the private business of Francis W. Lea, neither do they relate to his business more than they do to other enterers of land in Ocoee District, only in proportion the No. of entries made by him in said district, he appearing to have made more entries than any one else.

7th Int. You will please examine the record of locations that are set out in the record book marked C, and state whether the locations in said book from No. 7245 to 7258 have been once entered at length and are now erased, as indicated in the note in book B, sometimes called the memorandum book.

Answer. From an examination of said record of locations I find in said book C, that from No. 7245 to 7258, have been once entered at full length, and are now crossed out or erased, as indicated in the note referred to.

8th Int. State if it was possible in one day to receive and enter on the plan of the district, the lands entered, and to record at length the locations on which the entries were made, as many as fourteen hundred entries.

Ans. It was not possible for the labor above referred to in the question to be performed by the number of laborers in the office of the entry taker at the time referred to in one day.

9th Int. Were you living in Cleveland on the 5th day of April, 1842? If so, state whether or not there was an immense crowd in attendance, and also state whether, after that day's entries were over, the office was continued closed for any length of time, and how long, and the reason of its being kept closed?

Answer. I was living in Cleveland on the 5th of April, 1842; there were a great many people in Cleveland on that day, that being the day upon which the office opened to receive entries at 1 cent per acre, after which day the office was closed until the 15th of April, in consequence of the number of entries made on the 5th, and as the entry taker and clerks employed at the time could not get through with the entries made upon that day sooner than the 15th of the month, and which, aside from my personal knowledge, the location and record book of said office show to be the fact.

10th Int. You will look on grant book and at grant No. 5599; whose name is it in; how many grants are recorded between this grant and grant 5744, in the name of William Park Lea, if any, and if none, how many grants to other persons stand between these two numbers?

Answer. I have examined book I referred to, and find that record of grant No. 5599 is in the name of William Park Lea upon entry No. 7499, date 28th April, 1842. I find from said No. 5599 to 5701 one hundred and two grants recorded in the names of other persons, and one grant, No. 5701, in the name of William Park Lea, made upon entry No. 7145 dated 15th of April, 1842. From No. 5701 to 5744 there are 43 grants recorded in the name of other persons. Said No. 5744 is the land in dispute.

Question 11. Look on grant No. 5766, in book J of grants; in whose name is it in, on what entry founded, and how many grants between it, in other persons' names, before the same name occurs?

Answer. By examination of book J, above referred to, I find the name of William Park Lea in the record of grant No. 5766, and following that number I find four hundred and forty-nine grants recorded in the names of other persons, and then the name of William P. Lea occurs, said No. 5766 is founded upon entry No. 7147. Grant No. 6215, as appears from the record of grants, is in the name of William P. Lea, and there are four hundred and fifty-two grants recorded in the names of other persons before the name of William Park Lea occurs again, which is in record of grants No. 6218 upon entry No. 6992, entered 15th of April, 1842; grant No. 5766 was entered on the 15th April, 1842. The grant No. 6215 in the name of William P. Lea above alluded to is upon entry No. 6993 made 15th April, 1842.

Question 12th. Please state if the William P. Lea, who is so often spoken of in this deposition, is William Pickney Lea, the complainant in this suit, and is the William Park Lea spoken of, the son of Luke Lea, the former entry taker, and a brother of the Francis W. Lea who was once Register of the Ocoee District.

Answer. William P. Lea, so often spoken of in this deposition, is William Pinckney Lea, the complainant in this suit, and William Park Lea spoken of is the son, as I understand, of Luke Lea, former entry taker and a brother of the Francis W. Lea who was once register of the Ocoee District I suppose.

13 Question. You will please state where the said William Pinckney Lea resided on the 15th and 5th of April, 1842.

Answer. William Pinckney Lea, as I understand, at the time alluded to, lived at his brother Caswell Lea's in Polk County, and upon what is called the Savannah farm.

14 Int. You will please state at what time, and how long, Euclid Waterhouse acted as your deputy; and how long did you hold the office after he ceased to act as your deputy?

Answer. Euclid Waterhouse was my deputy for four years during

my first term of office, and I was re-elected to another term, but resigned the office at the end of two years and three months, as well as I now remember, being two years and three months after said Waterhouse ceased to be my deputy; he therefore ceased to be my deputy the 10th of December, 1845.

15th Int. When you left or resigned the office of Register, during your last term, were or not all the certified copies on regular file for which you had issued grants?

Answer. They were so left by me.

16th Int. Do you know what the state of feeling is existing between the respondent, Thomas H. Calloway, and Francis W. Lea, before alluded to, and how long has this feeling existed?

Answer. It has been about three years, as well as I recollect, since I understood that unfriendly feelings existed between Thomas H. Calloway and Francis W. Lea, or, rather, that said Francis W. Lea entertained such feelings towards said Calloway, and said feelings, to some extent, as I understand, yet exist, though some difficulties have been arranged, as I have learned, and that feeling does not exist to the same extent that I understood it to be when I first heard of it.

17 Question. You will please look again on the record of the grant covering the land in dispute, and state, if you please, in whose handwriting is the word Lea as it is written out and standing unaltered where it last occurs in the record of the grant, where the name of the party having title to the land is certified to by the Register?

Answer. From the similarity of the letters composing the name Lea to my own handwriting, I believe it to have been done by me as Register of the Ocoee District at the time, and being so instructed to do by the proper authority, either by the parties concerned, or by Luke Lea, Entry Taker at the time, and upon whose certificate said grant was made.

18 Question. Have you ever, in any case, made any alteration except in the discharge of your duty as Register, and on proper authority so to do?

Answer. I never have made any such alterations without such authority as I believed was sufficient to authorize such changes.

19 Int. You will please state if, during your continuance in office as Register, you often seen the complainant in Cleveland. Has the Register's office always been kept in Cleveland, and how far was the Savannah farm from Cleveland?

Answer. I did frequently see said complainant in Cleveland during the time I was Register, and the Register's office has always been kept in Cleveland from its first existence, and I suppose it to be about twenty-two or twenty-three miles from Cleveland to said Savannah farm.

20 Int. How many years have you known the complainant? Does your knowledge and personal acquaintance with him enable you to state whether he is a close man in dealing, or one who guards with strictness is pecuniary and property entered?

Answer. I do not remember the precise time of my first acquaintance with said complainant, but it has been several years since. My acquaintance with him has not been of such character as to enable me to say anything in regard to his being close in his dealings, &c., but I have understood that he was inclined so to be.

Cross-examination by Complainant.

1. Please state whether the entry, as recorded at length in entry-book B, No. 6288, is not in the name of William Park Lea? Also entries No. 6985, No. 6982, No. 6341, No. 6344, No. 6354, No. 6357, No. 6368, mentioned in defendant's first question on re-examination, are they not recorded at length in entry-book B, in the name of William Park Lea? Is not entry No. 6376, referred to in your answer to that question, record at full length in entry-book B, in the name of Francis W. Lea, while entry No. 6400 is recorded in said book B in the name of William Park Lea? Is not entry No. 6401 recorded in said book B in the name of William Park Lea; also entry No. 6634?

Answer. From an examination of book B, above referred to, I find those Nos. referred to in the question to be recorded, as stated in the question, in said book B of locations.

2 Int. by same. State if grant No. 6262, mentioned in your answer to the 4th question on re-examination, is not a grant to William Park Lea, upon entries which appear in both memorandum-books to have been made in the name of William P. Lea, while entry No. 6376 is recorded at full length in book B, in the name of Francis W. Lea, and entry No. 6400 is recorded in said book in the name of William Park Lea?

Answer. This question is all answered in my answer to the first interrogatory in the re-examination, except that in book B, sometimes called memorandum-book, I find the name of William P. Lea to No. 6376, and in book C, sometimes called memorandum-book, I find the name of Wm. P. Lea to No. 6376.

3 Int. by same. Does not the memorandum-book marked Day-Book C appear to be the original of the memorandum-book marked Fran's W. Lea, B? Is not the latter a copy of the former, as far as the former extends? If it appears to be a copy, in whose handwriting is it? Are there not different handwritings in the book marked Day-Book C, and whose writing is in said book?

Answer. I am not able to say as to which of the books referred to in the question were the original. One of said books C appear to have different hand in it, but appear mostly to be in the handwriting of Francis W. Lea; and book B seems to have different handwritings in it, and seems mostly to be in some other handwriting, not familiar to me.

4 Int. by same. Is not entry No. 6626 marked to Wm. P. Lea in the memorandum-book marked Day-Book C, and to Chandler, Rogers,

and McCamy in the book marked Fran's W. Lea, B? And are there not numerous erasures in both of said books?

Answer. Said names and numbers do appear as stated in the question; but in book B, and immediately after the No. 6625, No. 6626 appears to have been once made with the name of William P. Lea opposite, and both the number and name seem subsequently to be scratched out, and the same No. 6626, with the name of Chandler, Rogers, and McKamy opposite, as stated in the question; and there seems to be several erasures in said books; and in the book of locations, entry No. 6626 is in the name of Chandler, Rogers, and McKamy, and covers the northwest quarter of section 13, in fractional township 2, and range 4 west of the basis line. In the book of grants, grant No. 6255, made upon entry No. 6626, is in the name of William Park Lea, for 80 acres of land in the fourth range west of the basis line, second fractional township and fourteenth section, being the east half of the northeast quarter, and it appears from location-book that the land last described is covered by entry No. 6625, in the name of William Park Lea; but it appears from book B, sometimes called memorandum-book, that No. 6625, in the name of William P. Lea, covers 80 acres of land.

5th Int. by same. Are not the following entries, to wit: Nos. 6400, 6401, 6357, 6354, 6368, 6288, 6334, 6340, 6341, 6344, 6634, 6982, 6996, and 6997, in the name of William P. Lea, or Wm. P. Lea (without the word Park), in the memorandum books, marked Fran's W. Lea, B, and day book C, and are not the entries of said numbers, where they are not recorded at length in the entry books, in the name of William Park Lea at full length?

Answer. The above numbers are as stated in the question in both books referred to up to No. 6982; the book C gives out before that No. 6982 appears in the book B, and that No., with No. 6996 and No. 6997 are in book B, as stated; said entries are in the name of William Park Lea, as shown in the record of locations.

6th Int. by same. Are not the following entries, to wit: Numbers 6986, 6985, 6983, 6984, 6987, 6988, 6989, 6990, entered both in memorandum book marked Fran's W. Lea, B, and in the entry books in which the entries were recorded at full length, in the name of William Park Lea at full length?

Answer. Said entries are as stated in the question in both books referred to, in the name of William Park Lea.

7th Int. by same. Is not entry No. 6115 in the name of William P. Lea in both memorandum books, and altered to John B. and Thos. W. Maston in entry book, as described in a former part of your deposition, while the grant upon it, being grant No. 6251, is recorded in the name of William Park Lea? And is not entry No. 6376, in William P. Lea's name in *both* memorandum books, and Francis W. Lea's name in entry book B, where the entries were recorded at full length? And is not grant No. 6262 recorded upon said last named entry, in the name of William Park Lea?

Answer. Entry No. 6115 is as stated, in the name of William P. Lea in both memorandum books, and altered in entry book B, of locations, to John B. and Thos. W. Maston, as stated in one of my former answers, while the grant upon it being No. 6251, is recorded in the name of William Park Lea, and entry No. 6376 is in the name of William P. Lea and Wm. P. Lea, in both memorandum books, and in the name of Francis W. Lea in book B, of locations, where the entries are recorded at full length; and grant No. 6262 is recorded in the name of William Park Lea, said grant being made upon entry No. 6376, and entry No. 6375 covers the same land as in the grant above, and is recorded in the entry book, in the name of William Park Lea, when entry 6376 to Francis W. Lea does not cover said land, and No. 6375 in both memorandum books above referred to, are dropped out, or left blank.

8th Int. by same. In your answer to defendant's fifth interrogatory, upon re-examination, you say that you consider *one* of the memorandum books "to be a necessary book to the office of Entry Taker;" please state to which book you referred. And, do you consider that either memorandum book was "necessary to the office of Entry Taker," for any other purpose than as an index to the entry books, and a memorandum of moneys received for land entered? Could the entries at full length in the entry books have been made out from the memorandum books alone, and without having the locations present to copy into said entry books?

Answer. I did not refer to either of said books in particular, but merely meant that some such book was necessary to said office, as it is an index as well as a memorandum book. The entries could not be made out at full length from said memorandum books alone without having the locations present to copy from.

9th Int. by same. Who succeeded you as Register, and who has or have held the office since? Who succeeded Luke Lea as Entry Taker, and who have since held the office?

Answer. Francis W. Lea succeeded me as Register, and James S. Bradford succeeded Francis W. Lea, and now holds the office. Francis W. Lea succeeded Luke Lea as Entry Taker, and James S. Bradford succeeded him, and now holds the office, both offices being consolidated into one.

10th Int. by same. In your answer to the defendant's seventeenth question, upon re-examination, you say that you "believe it to have been done by you as Register of the Ocoee District at the time, and being so instructed to do, by the proper authority—either by the parties concerned or by Luke Lea, Entry Taker." Please state whether you have any *distinct* recollection of the authority, if any, under which you acted, or any other recollection (aside from you *belief*), of the act of making the alterations other than that stated in your answers to my fortieth, forty-first, forty-second, and forty-third interrogatories? If you made the alterations by direction of Luke Lea, do you not believe that you or he would, at the same time, have made

a corresponding alteration in the certificate of entry issued by him, and commonly called a certified copy?

Answer. My reason for stating that I believed, or that I would not or did not make such alterations, without having the proper authority, &c., is from the fact that I would not make such alterations without it, and from the distinct recollection of something being said or done upon that subject, but I do not believe that Luke Lea and myself would have made an alteration of the kind without altering the certified copy of the entry, to correspond with said grant, and record of grant, but as it was not my plan to alter the certified copy; I might, upon his promise to do it, have made the alteration.

11th Int. by same. Did you understand that the complainant is close in his dealings before or since the commencement of the suit? What is his general character as to being a man of integrity? Has he, or not, for some years, been feeble both in body and mind?

Answer. I do not remember, at present, that I ever heard anything said upon the subject of his closeness, &c., until since the commencement of this suit; his general character as to integrity, &c., I know nothing but what it is as good as the most of men, and he is said to have been for several years, somewhat feeble both in body and mind.

Re-examined by Respondent's Solct's.

1 Int. You will please state if Book C, sometimes alluded to in this deposition, as a memorandum book, contains also entry No. 5446, and whose name is written out in full as the enterer of that number, and how many acres of land does the entry indicate as covering.

Answer. *Answer.* Book C, referred to in the question, does contain said No. 5446, and the name of William Park Lea is written out at full length opposite said No., and 80 acres seem to have been entered at the time by him, as shown from said book.

2d Int. You have stated that you would not have made the alteration in the grant alluded to without proper authority. If William Pinckney Lea and Park Lea had been both present, and desired and concurred in the alteration, would you have considered that competent authority, without having any resort to Luke Lea to correct any error in the certificate of entry? or, if you, in filling up the grant, had made an error, and the certificate of entry showed that, would you have considered you had sufficient authority also, to correct the error?

Answer. If the parties above referred to had so instructed me, of course that would have been considered sufficient authority by me; or if I had made a mistake, or an omission, in copying from the certified copy of the entry, I would have thought myself authorized to make the correction.

Question. Would you or not have made the correction on the desire and admission of one party, without the concurrence of the other also?

Answer. I would not.
And further deponent saith not.

J. C. TIPTON.

The taking of the foregoing deposition was commenced on the 9th day of December, 1854, and continued from that time to the 11th of December, then to the 12th, 13th, 14th, and 15th, when said deposition was closed and signed. The said continuance was for the purpose of completing the deposition, not being able to finish it sooner. All of which was by the request, and with the assent of the solicitors for complainant as well as for respondents; and done also with the assent of the commissioner.

GEO. W. ROWLES,
Solicitor for Resp.

THOS. A. R. NELSON,
Sol. for Compl't.

JOHN H. PAYNE, *Com'r.*

December 15th, 1854.

UNITED STATES OF AMERICA:

Be it remembered, that John H. Payne, Commissioner, duly appointed by the Circuit Court of the United States, for the District of East Tennessee, do hereby certify that the foregoing deposition, signed by the deponent in my presence, Thomas A. R. Nelson, Esqr., as solicitor for complainant, and George W. Rowles, as solicitor for the respondents, both present during the examination; that the interrogatories or questions propounded to the witness were reduced to writing by the solicitors of the respective parties, and the witnesses' answers thereto were respectively reduced to writing by himself in proper person; that said deposition was taken at the place mentioned in the caption, being commenced on the ninth day of December, 1854, and continued from day to day until the night of the fifteenth of said month, which continuance was by the consent of the solicitors on both sides, and myself. I further certify that I am not of counsel or attorney, or of kin to either of the parties, nor interested in said cause.

Given under my hand and private seal, December the 15th, 1854.

JOHN H. PAYNE, [SEAL.]
Commissioner.

Exhibit A, to J. C. Tipton's Depo.
No. 5744.

STATE OF TENNESSEE.

To all to whom these presents shall come, greeting:—

Know ye, that in consideration of an entry made in the Entry Taker's office of the Ocoee District, of No. 5446 (47), dated the 5th day of April, 1842, by William *Park* Lea, as general enterer, there

is granted by the said State of Tennessee, to the said William *Park* Lea and his heirs, a certain tract or parcel of land, containing eighty acres, lying in the county of Polk, in the said district, situate in the 5th range east of the basis line, fourth fractional township south, and fifteenth section, being the east half of the southwest (and north half of the northeast) quarter of said section, beginning at the southwest corner of said quarter, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said William *Park* Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed, at Nashville, on the 21st day of August, in the year of our Lord one thousand eight hundred and forty-two, and of American independence the sixty-seventh.

By the Governor, JAMES C. JONES.

JOHN S. YOUNG, *Secretary.*

William *Park* Lea hath title to the above described land.

J. C. TIPTON, *Register of Ocoee District.*

Recorded the 18th day of November, 1842.

Exhibit No. 1, *to J. C. Tipton's Depo.*

No. 6605.

THE STATE OF TENNESSEE.

To all to whom these presents shall come, greeting:—

Know ye, that in consideration of an entry made in the Entry Taker's office of the Ocoee District, of No. 8739, dated the 18th day of October, 1842, by Francis W. Lea, as general enterer, the certified copy being assigned to William P. Lea, there is granted by the said State of Tennessee, to the said Wm. Park Lea and his heirs, a certain tract or parcel of land, containing 80 acres, lying in the county of Polk, in the said district, situate in the 5 range east of the basis line, the fourth fractional township, and section 15, being the east half of the southwest quarter of said section, beginning at the southeast corner of said quarter, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said Wm. Park Lea and his heirs forever.

In witness whereof, Wm. Trousdale, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed, at Nashville, on the 1st day of August, in the year of our Lord one thousand eight hundred and forty-eight, and of American independence the third.

By the Governor, WM. TROUSDALE.

WM. B. A. RAMSEY, *Secretary.*

Wm. Park Lea hath title to the above described land.

FRAN. W. LEA, *Register of Ocoee District.*

Record Sept. 20, 1849.

Exhibit No. 2, to J. C. Tipton's Depo.

No. 8739. 24 Aug., 1849. 7008.

Franc's W. Lea enters, as general enterer, 80 acres of land, being the west half of S. W. quarter of section 15, in fr. to. 4 so., and range 5 east of the basis line, in the Ocoee District, beginning at the southwest corner of said quarter section.

Entered at one cent per acre, Oct. 19th, 1842.

I certify the foregoing to be a true copy from the records of my office. LUKE LEA,

Entry Taker of the Ocoee District.

The above certified copy is endorsed thus:—

For value received of Elias Davis, I do assign this certified copy to John McCoy, as the assignee of said Davis, and the Register will consider him as the owner of the land described within.

July 24th, 1844. FRAN'S W. LEA.

For value received, I, John McCoy, do assign this certified copy to Allen Thurman, as the assignee of said McCoy, and the Register will consider him as the owner of the land described within; the 24 day of March, 1848. JOHN McCOY.

Exhibit 3, to J. C. Tipton's Depo.

No. 7008.

THE STATE OF TENNESSEE.

To all to whom these presents shall come, greeting:—

Know ye, that in consideration of an entry made in the Entry Taker's office of the Ocoee District, of No. 8739, dated the nineteenth day of October, 1842, by Francis W. Lea, as general enterer, the certified whereof being transferred to Allen Thurman, there is granted by the said State of Tennessee, to the said Allen Thurman and his heirs, a certain tract or parcel of land, containing eighty acres, lying in the county of Polk, in the said district, situate in the fifth range east of the basis line, fourth fractional town. south, and fifteenth section, being west half of the southwest quarter of said section, beginning at the southwest corner of said quarter, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said Allen Thurman and his heirs forever.

In witness whereof, Neil S. Brown, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed, at Nashville, on the 24th day of August, in the year of our Lord one thousand eight hundred and fifty-nine, and of American independence the seventy-fourth.

By the Governor, N. S. BROWN.

W. B. A. RAMSEY, *Secretary.*

Allen Thurman hath title to the above described land.

FRAN'S W. LEA, *Register of Ocoee District.*

Recorded 12th Oct., 1849.

WILLIAM P. LEA,
vs.
CALLOWAY, THE POLK COUNTY COPPER COMPANY, *et al.*

On this 7th day of December, 1854, came on for hearing the various matters and rules made in this cause, when the Court is pleased to order and direct that the rules heretofore made in this cause for additional security is hereby discharged. And upon the hearing of the exceptions to the answers it is ordered by the Court that the exceptions resting upon the failure of the defendants to produce certain papers specified in the exceptions be overruled. And the exception which rest upon the failure of said defendants to answer as to the custody of the grant be, and the same is, sustained, and thereupon sufficient reason exhibited to the Court; the complainant is allowed by the Court thirty days, within which to file an amended and supplemental bill, to make additional parties, and to bring forward additional matter in illustration of the equity of the case as at present presented in the bill and answer.

And it is further ordered by the Court that the motion for an injunction or receiver be, and the same is, refused; and it is further ordered by the Court, the parties by their solicitors assenting thereto, that the deposition of J. C. Tipton may be taken on oral interrogatories by the defendants at the office of the Register of the Ocoee District, at Cleveland, on next Saturday, without further notice, before J. H. Gant or John H. Payne, who are hereby appointed with like consent commissioners, before whom depositions in this cause and in the cause of Caldwell, Keith, *et al. vs.* John M. Dorr, and the case of Calloway and Waterhouse *vs.* John M. Dorr *et al.*, and which deposition of said Tipton shall be read on the final trial of this cause, and is taken now because of the infirmity of said witness; and it is further ordered by assent of solicitors of the parties that complainant may likewise, on ten days' notice served on Thomas C. Lyon, take said J. C. Tipton's deposition on oral interrogatories at Cleveland, Tennessee; and it is further ordered by the Court, that the solicitors of both parties may take out of the file the grant under which both parties claim upon leaving a receipt with the master, the master having first caused a fac simile, as near as may be, to be made thereof, and said solicitor, after using said grant in taking testimony, shall return the same to the master, so that both parties have a proper use of said grant for purposes of testimony; and it is further ordered by the Court, that the injunction asked for to stay the action of ejectment in the pleadings mentioned be granted, and the defendants enjoined from relying on the deed in the bill mentioned made by complainant to A. D. Taylor in defence thereof, until the further order of the Court; and defendants are allowed thirty days within which to file their answers to the exception sustained herein.

Amended and Supplemental Bill.

WILLIAM P. LEA
vs.
POLK COUNTY COPPER COMPANY AND OTHERS.

To the Judges of the Circuit Court of the United States for the District of East Tennessee :—

William Pinckney Lea, of Dalton, and a citizen of the State of Georgia, brings this, his amended and supplemental bill of complaint, by leave of this Honorable Court first had and obtained, against the Polk County Copper Company, a corporation chartered by the State of Tennessee, and all the corporators and stockholders therein being citizens of the State of Tennessee, and of the State of New York; against Charles Burnese, of Ducktown, and a citizen of the State of Tennessee; against Isham Davis, of Ducktown, and a citizen of the State of Tennessee; against Martin Sheffield, of Ducktown, and a citizen of the State of Tennessee; against John Tonkins, of Ducktown, and a citizen of the State of Tennessee; against Clarinda Crumby and her husband, Crumby, of Ducktown, and citizens of the State of Tennessee; against Thomas H. Calloway, of Cleveland, and a citizen of the State of Tennessee; against Euclid Waterhouse, of Cleveland, and a citizen of the State of Tennessee; against John Caldwell, of Jefferson County, and a citizen of the State of Tennessee; against Alexander H. Keith, of Athens, and a citizen of the State of Tennessee; against Samuel Congdon, of Ducktown, and a citizen of the State of Tennessee; against Charles Congdon, of Brooklyn, and a citizen of the State of New York; against Jemima Mastin, widow of Thomas Mastin, deceased, John J. Mastin, Sarah A. Mastin, Susan N. Mastin, Reuben F. Mastin, Thomas H. Mastin, David C. Mastin, William W. Mastin, and Martha J. Mastin, all of whom are of McMinn County, and citizens of the State of Tennessee, and are the heirs and children of said Thomas Mastin, deceased, but some of whom are minors, but how many are not known, but for all of whom who are minors the said Jemima Mastin is the regular guardian, and is sued as such as well as in her own right; against Henry Young, of the City and State of New York; against the said Charles Congdon and Lyman W. Gilbert—the said Charles Congdon and the said Gilbert are citizens of the State of New York—as Trustees of the Mary Mining Company; and against the "Mary's Copper Company," a corporation chartered by the State of Tennessee, and the said Samuel Congdon, Lyman W. Gilbert, William Hickock, and Charles Congdon, the corporators named in said charter, and all other corporators and stockholders in said "Mary's Mining Company," if others there be, and all of whom are citizens of the States of Tennessee and New York, as complainant is informed and believes.

And thereupon your orator complains and says that, on the 29th

day of September, 1854, he exhibited his bill of complaint in this Honorable Court against all of the parties above named, except the said Henry Young, the said Charles Congdon, and Lyman W. Gilbert, as Trustees of the said Mary's Mining Company, the said "Mary's Copper Company," and the said corporators and stockholders thereof; and that, at the last term of your Honorable Court, leave was granted him to file this amended and supplemental bill. In his said original bill your orator claimed title to the east half of the southwest quarter of section fifteen, fractional township four south, and range five, east of the basis line, in the Ocoee District, beginning at the southwest corner of said quarter section of land, and containing eighty acres of land; but such of the defendants as have answered the original bill claim title truly to one-half of said tract, being the southern half of the eighty acres, and disclaim any title to the northern forty acres, or half of said tract.

Your orator has been informed and believes, and charges the fact to be, that one John Davis pretended to convey the said northeastern forty acres of said tract to the said Henry Young; that said Henry Young has pretended to convey the same to the said Charles Congdon and Lyman W. Gilbert, as trustees for the Mary Mining Company, meaning the "Mary's Copper Company," a corporation chartered by the State of Tennessee, and that said conveyances are utterly null and void, because your orator has, and had at the time of said pretended conveyances, the superior title, as shown in his original bill, and as will be hereinafter more fully explained and disclosed.

Your orator states that, since the filing of his original bill he is informed and believes, from a partial examination made by his agent and counsel of the books and papers now remaining in the Entry Taker's office at Cleveland, Tennessee, that he was led into error, in some of the allegations made in said bill, by the certificates of the Secretary of State, marked as Exhibits No. 2 and No. 4, to the same, and also by the careless manner in which the books and papers of said Entry Taker's office are kept, and the absence of some of those books and papers from the office at the time when said office was examined by your orator previously to the filing of said original bill; and these statements your orator will proceed to correct, as far as it is in his power to do so, by the more careful, but still unsatisfactory and incomplete, examination made by himself, his agent and counsel, since the filing of the original bill.

Since said bill was filed, and since the last terms of your honorable court, the defendants to said bill caused to be taken the deposition of J. E. Tipton, former Register of the Ocoee District, and your orator, his agent and counsel, immediately before and during the progress of taking said deposition, discovered that the books and papers of said office are kept in a very loose and careless manner, and several small books were brought into the office by Francis W. Lea, the former Register, at the request of your orator's agent and counsel, which were not in the office when their examination com-

menced. Nearly ten thousand entries of land have been made in the Ocoee District, and there are or ought to be in the office, nearly double that number of locations and certified copies. Many of these, as your orator has reason to believe, are absent from the office, or, if not, are so mingled together, that it was and is a very laborious and tedious process to separate them.

During the progress of taking said deposition, no assistance was derived from the present incumbent of the office, and your orator and his agent, as well as the adverse parties, were under the necessity of examining for themselves the books and papers. During the progress of the examination, numerous locations and certified copies were discovered, and additional researches were made by both parties among the books, in consequence of which, the examination of the witness was protracted to a much greater length than would have been necessary, had the books and papers been systematically kept; or had the parties previously possessed full information in regard to the condition of the records and papers in the office, though defendants Calloway & Waterhouse, and their solicitor, was familiar with the office, &c. From said examination, your orator became satisfied that he was misled by the certificate of the Secretary of State; and that, so far from being entitled to all the lands mentioned in exhibit No. 2, as having been granted to W. P. Lea as implied in the original bill, the larger number of the tracts therein mentioned, were, in fact, entered by William Park Lea, and a part of them, only, was entered by your orator. It also became apparent, and your orator admits that he was mistaken in the allegation made in his original bill, that the distinction therein mentioned between him and William Park Lea had been uniformly kept up by the Entry Taker in the manner supposed by your orator.

In consequence of this, and the discoveries made in the progress of the examination of the Entry Taker's office as well as of the grounds relied upon by such of the defendants as have answered the original bill, your orator deems it indispensable to a correct understanding of his case that he shall state briefly so much of the routine of duty prescribed by law for the Entry Taker and Register as may be necessary to elucidate the facts hereinafter to be stated.

On the 20th November, 1837, an act was passed by the General Assembly of the State of Tennessee, entitled "An Act to dispose of the lands in the Ocoee District," by which it was, in substance, provided, among other things, in section 8, that persons desiring to enter lands in said district, should produce to the Entry Taker, at the time of making their entries, "a minute description in writing of the piece, parcel, or tract of land," intended to be entered. This description is styled in said section, "*a location*," and the Entry Taker is directed "*to record the same in a well bound record or entry book, by him to be kept for that purpose*, and also to plainly mark the same upon the general plan of said district, or a true copy thereof by said Entry Taker to be procured and kept in his office, showing

therein the price of the same, the name of the enterer, and the quarter section." The entries were to be numbered in succession as received; and by the 13th section, among other things, it is provided that the Entry Taker shall have compensation for making out "a *certified copy*" of each entry to the Register of the Ocoee District. It also provides that the Entry Taker shall make quarterly returns to the superintendent of public instruction, and shall pay over to him, &c. &c. The office of Register was created at the same session of the General Assembly, by an act passed on the 8th December, 1837, entitled an "Act to establish a Register's Office in the Ocoee District," by which, among other things, it is provided that "all land which may be entered in the Ocoee District shall be granted and recorded by the Register of said district," and that "said Register shall issue grants upon *the certificates* of the Entry Taker of said district." Under these statutes, your orator charges that, at the time when he entered the land in controversy in this case, on the 5th April, 1842, as well as before and after said date, it was customary for enterers of lands in said district, to file with the Entry Taker written locations containing a minute description of the lands intended to be entered; that said locations were sometimes signed, and, at others, not signed by the enterers; that they were filed in the office by the Entry Taker; that he kept a plan or map of the district upon which the names of the enterers were recorded at the time of entry: that he also kept well bound books in which the locations were literally copied at full length; that, from said books, he issued to the enterers certified copies of the entries as recorded; that their certified copies, or certificates of entry were passed over to the Register, by whom grants were prepared and forwarded to the Governor and Secretary of State for their signatures; that said grants, when thus signed, were returned to the Register, by whom they were recorded, in his office, in books which he kept for that purpose; that the offices of Entry Taker and Register have since been consolidated by law; and that the books and papers of both offices now are, or ought to be, in the office of the present Entry Taker of the Ocoee District.

But, although the duties of the Entry Taker and Register, and the kinds of books to be kept by, are thus prescribed by law, your orator charges that a part of the defendants to the original bill set up in their answers, and have attempted to establish by proof, other books, as office books, which are not prescribed by the statutes, and which, altho' they may have been kept in the office, cannot, as will be presently seen, furnish any satisfactory information as to one of the main points in controversy. In the answer of Thomas H. Calloway and others to the original bill, it is gravely insisted that Book B, one of said books, is a real, genuine entry book, such as the statute required the Entry Taker to keep in his office. In the answer of Alexander H. Keith and others, it is described as a book "kept according to the requirements of the statute," and it is stated that

it "served as a sort of *index* to other records in the office." In the answer of John Caldwell, it is more correctly described as "a note or memorandum book," and your orator charges that, if it was kept at all by the Entry Taker, or his assistants, it was not the office book which the law required to be kept, but was simply a memorandum book—kept, for his own convenience, to show the amount of money he received, and to answer the purpose of an index to the records proper of the office, and more probably as a facility for making his returns to superintendent.

Said book only purports to contain the number of entry, the name of the enterer, the kind of entry and date of entry, the quantity of land entered, the price per acre, and the gross value of land entered. It does not purport to contain a minute description in writing of the piece, parcel, or tract of land intended to be entered, designating the range, township, section, and quarter section, and also the corner of the quarter section at which the enterer wished to begin, as is, in effect, required by the statute.

The statute requires this minuteness of description in the location, and, as already stated, the Entry Taker was required "to record the same in a well-bound record or entry-book." And your orator charges that this requirement was faithfully complied with by Luke Lea, while he was Entry Taker; that he recorded, at length, the locations made in his office, in well-bound record or entry-books; that the first of said books, in size and external appearance, resembles the ledgers ordinarily kept by merchants and the record-books now generally used in courts of justice; that it appears to have been "made to order," having on the back, in gilt letters, the words "Entry-Book, Ocoee District;" that the next entry-book is very similar to the first, and is entitled on the back, in gilt letters, "Record-Book;" that the entries were recorded in said two books, in manuscript; that four other entry-books were kept in the office, as continuations of said two books first above described; that they are marked A, B, C, D, and appear to be of domestic manufacture—numerous blank printed forms having been bound together in each of said books, and filled up by the Entry Taker, or those in his employ, so as to make true, perfect, and complete copies of the locations; and that said 6 books contain, in regular succession, all the entries made in said office, consecutively numbered and recorded at length, with the exception of the last book, in which a great many blanks are not filled up, and probably a few similar cases in some of the previous books.

From facts appearing in said books and such of the papers of the office as your orator, by himself or agent, has had an opportunity to examine, as well as from information otherwise derived, your orator charges that when the price of land in the Ocoee District was reduced, and the office opened on the 5th April, 1842, for the reception of locations at one cent per acre, several hundreds of locations were filed in the office on that day; that it was utterly impossible for the Entry Taker to record them at length on that day, and quite impro-

bable that he could even note them in a memorandum-book; that on that day he carefully numbered and filed the locations; that, finding it impossible to record them, he closed his office from the 5th until about the 15th of that month, to obtain time to record the entries; that if he kept any memorandum-book on the 5th April, 1842, it was more than probable that, in the hurry of business, mistakes were made in it, and that all such mistakes were corrected in the entry-books proper, when he, or those acting under his authority, deliberately copied each location in the entry-books, or when he or they made out, from those books, within the thirty days allowed by law from the date of entry, the certified copies herein before mentioned.

Your orator further charges that book B, relied upon by the defendants, is a small, thin book, and not a well-bound record or entry-book, such as the statute required, and such as the Entry Taker, in fact, procured and used; that said book B is marked on the lid "Day-Book" and "Francis W. Lea, B;" that it does not purport to be an office book; that, on the day previous to the taking of J. C. Tipton's deposition, your orator's agent, Albert M. Lea, and his counsel who attended to the taking of said deposition, were informed by Francis W. Lea—a son of Luke Lea, who succeeded said Tipton as Register, and who is familiar with both offices, both before and since they were united—that said book B was not kept by Luke Lea while he was Entry Taker, or was not the original book kept by him; that it was in part copied from a memorandum-book kept by said Entry Taker; and, on the morning of said Tipton's examination, the said Francis W. Lea, having, at the request of your orator's counsel, made search among his own and his father's books and papers, brought into the office another memorandum-book, marked Day-Book C, which, as he stated, was the original memorandum-book, and from which it appears that many of the entries made in book B were copied, and other memoranda of enterer's name, &c., as hereinbefore described, continued down to a certain period. Said Lea also, at the same time, brought into the office several other small memorandum-books, from which it appeared that the numbers, names, &c., were entered in regular succession.

But which of said books is original, or whether all or either of them are original books actually used in the office by the Entry Taker and his successors, or whether they are merely copies of books which were so used, your orator does not certainly know, and, if it be in any way material, he calls for full proof of their genuineness. Said books, like other books in the office, contain various erasures and interlineations, and none of them are such as were required by law, and, in some respects, the entries differ.

But if said memorandum-books are genuine, your orator charges that they do not furnish any satisfactory, or even persuasive, evidence to the prejudice of his title. He admits that in book B, relied upon by the defendants, one of the pages is *headed* with an entry in the following words and figures: "5413. Thomas H. Calloway. 160.

April 5th, 1842. As general enterer, at 1 cent, $160;" and that at the foot of said page, which is filled with the names of various other persons, are the following words and figures: "5446. William Park Lea, 80 . . . 80," so carried out and extended as to convey the idea that William Park Lea had, on the 5th April, 1842, entered 80 acres of land, or filed a location for 80 acres, No. 5446, at one cent per acre, and amounting to 80 cents. A similar entry is made in the memorandum-book marked Day-Book C; the entry in book B, as your orator is informed, being in the handwriting of William Park Lea, or of one Smith, and that in book being in the handwriting of Francis W. Lea. But your orator charges that, if said books are genuine, William Park Lea's name was written in them by mistake, and that this mistake was subsequently corrected by the Entry Taker himself, or some one acting under his authority.

For your orator shows and charges the truth to be that the original location, a copy of which, marked Exhibit No. 1, was filed by him with his original bill now on file in the Entry Taker's office, and which was made by your orator, is in the handwriting of James Armstrong Lea, a deceased son of the Entry Taker, who, at the time of writing the same, acted as his father's assistant or deputy in the office, and both before and after writing the same, wrote various other locations for other persons desiring to enter lands, and wrote the location, No. 5446, at your orator's request, he being then ignorant as to the form of making the same.

Your orator further charges that the original map or plan of the Ocoee District, now on file in the Entry Taker's office, contains, upon different sheets or pages, a representation of each township and fractional township into which said district was divided, and of the various quarter sections contained in the townships; that upon the sheet or page representing fractional township 4 south, and range 5 east of the basis line, the tract of land claimed by your orator, in virtue of his entry No. 5446, is marked to him in the handwriting, as he is informed and believes, of one of the Entry Taker's sons then acting in the office, thus: "Wm. P. Lea, G. E. 1ct.," meaning William P. Lea, General Enterer, at one cent per acre; that upon the same page of said map there are four other entries marked to William Park Lea, two in his name at full length, and two abbreviated thus: "Wm. Park Lea;" that your orator has been informed and believes that the name in said last mentioned entries, or a majority of them, was written by William Park Lea himself, and that the distinction between him and your orator was thus kept up upon the map, at least in the earlier entries made by the parties. Your orator further shows that in the entry book A, when the locations were recorded at full length, the original locations hereinbefore mentioned, No. 5446, is copied at full length without erasure or interlineation, and there stands in the name of your orator as William P. Lea.

It will thus be seen that, if the memorandum books B and C contained the first entries made by the Entry Taker amid the "noise

and confusion" incident to the pressure of a large crowd, the entry books proper exhibit the "sober second thoughts" as well as acts of the Entry Taker, and that he was enabled to correct and did correct the error in the memorandum book by means of the original location, and the entry upon the map, and personal knowledge of James A. Lea, who wrote the same for your orator.

In aid of this allegation your orator further charges that, on the 5th April, 1842, as appears from the books and papers in the Entry Taker's office, so far as the same have been examined, there were seventeen entries of land made in the name of William P. Lea, or William Park Lea; that all of the original locations for said lands have been found in the office but three, to wit: Nos. 6115, 6334 (which No. 6334 is, probably, joined in the same grant with location 6340), and No. 6401; that each of said original locations is in the name of William Park Lea at full length, with the exception of No. 5446, the entry in dispute, and No. 6376, which is attached to and joined with No. 6400; and your orator therefore charges that all the entries made by William Park Lea, on the 5th April, 1842, were made by him in his own name and in his own handwriting, giving the name at full length, which the entry made by your orator was made in the name of William P. Lea, and in his usual mode of writing, or causing to be written his name; and that the distinction between the two names and the mode of making entries therein was thus clearly established and defined, at least as to entries made on the 5th April, 1842.

And to show how little reliance should be placed upon said memorandum books, your orator further charges that not one of the locations thus made in the name of William Park Lea, on the 5th April, 1842, is so entered at length upon the memorandum books, but they are all entered in both of said books, either in the name of William P. Lea, at full length, or Wm. P. Lea, abbreviated, with the single exception of the entry in dispute, and entry No. 6626, which appears, in memorandum book B, to be in the name of Chandler, Rogers and McCamy, and, in the memorandum book C, to be in the name of Wm. P. Lea.

Your orator further charges that little, if any, difficulty can exist in regard to the said entries or locations made on the 5th April, 1842, as they are all recorded at length in Entry Book B, in the name of William Park Lea, at full length, and in accordance with the original locations, with the exception of No. 5446, which is recorded in your orator's name, and with the further exceptions of No. 6115 (as to which more will be said hereafter), where the name of William P. or William Park Lea appears to have been erased with a knife, and "John B. and Thos. W. Mastin" written over it; No. 6376, which appears to have been recorded in the name of Francis W. Lea, but, upon which number, and Number 6400, a grant, No. 6262, was issued to William Park Lea, and No. 6634, to which the letters "ark" appear to have been added on the entry book.

Your orator further charges that the certified copies of all of said entries made on the 5th April, 1842, and now in the Entry Taker's office, with the exception of No. 5446 (as to which more will be presently stated), and numbers 6115 and 6625, upon which last named number and entry No. 6626, a grant, No. 6255, was issued to William Park Lea. All of said certified copies were issued in the name of William Park Lea, at full length, with the exception of No. 6634, which appears to have issued in the name of William P. Lea, and as to which the letters "ark" are added on the entry book, and in the grant book or record of grants.

The name of "John B. and Thos. W. Mastin" was written, as your orator has reason to believe, by Francis W. Lea, in the manner above mentioned, long after entry No. 6115 was properly recorded in the entry-book, and if this was not an error against your orator, it will thus be seen that, as to the record of entries of 5th April, 1842, but one mistake was committed against the said William Park, which, as to said entry No. 6634, was corrected, where it should have been corrected, upon the entry-book; and by reference, doubtless, to the original location, which was, as already stated, in the name of William Park Lea.

Subsequently, to wit, on the 15th April, 1842, eighteen entries were made in all by your orator and the said William Park Lea, upon part of which, as your orator has been informed and believes, several grants were issued in his (your orator's) name. All the locations made upon that day, either by your orator or the said William Park Lea, were made, as your orator believes, either in the name of William P. Lea, Wm. P. Lea, or W. P. Lea, without observing any distinction as to the middle name; but this distinction, with the exception of that which has hereinbefore shown to have been erroneous, was then for the first time attempted to be observed, in the memorandum-book marked Francis W. Lea, B, and relied upon by the defendants, the memorandum-book marked Day-Book C extending only to No. 6752, and not embracing any of the entries made by either of the parties on the 15th April, 1842.

Of the entries made on the 15th April, 1842, nine were made, as your orator believes, by William Park Lea, to wit: Nos. 6982, 6985, which were consolidated in grant No. 6264; No. 6986, embraced in grant No. 6259; Nos. 6987, 6988, 6989, 6990, embraced in grant No. 6265; No. 7145, covered by grant No. 5701; and No. 7147, covered by grant No. 5766; and in all these cases, so far as your orator has any knowledge or information, the entries and grants were properly recorded, in the name of William Park Lea, in full, in the entry and grant books, without erasure, alteration, or interlineation; and, so far as discovered, the certified copies were in like manner properly issued, without being in any way blurred or mutilated.

The entries made by your orator, on the said 15th April, 1842, were No. 6983, covered by grant No. 5764; Nos. 6984, 6997, embraced in grant No. 6260; No. 6996, covered by grant No. 6258;

No. 6991, covered by grant No. 6219; No. 6992, covered by grant No. 6218; No. 6993, covered by grant No. 6215; No. 6994, covered by grant No. 6216; and No. 6995, covered by grant No. 6217.

Of these, the two first are entered in memorandum-book B, in the name of William Park Lea, and the remaining seven in the name of William P. Lea.

All of them appear to have been originally entered in entry-book B, in the name of William Park Lea, at full length, the letters "ark" being erased on said book, as to the last five, with a knife. The certified copies, so far as discovered, are in the name of William Park Lea, at full length, while four of the grants, as recorded on the grant-books, contain erasures in the name of the grantee, and the other four are without erasure.

When, how, by whom, under what circumstances, or for what purpose said erasures were made, without making corresponding erasures in the other books and papers, your orator has no personal knowledge. He has no recollection of having even gone to the Register, or Entry Taker, in company with William Park Lea, or with any other person, for the purpose of having his grants corrected, as the defendants insist; and if any such circumstances occurred, he calls for full proof.

He remembers that he frequently applied to the Register for his grants, and was informed that they were not perfected. He has a recollection of not having taken all of the grants out of the office, and believes and charges the fact to be that a part or all of the grants issued upon entries made by him on the 15th April, 1842, were "*lifted*" from the office by his brother, Caswell Lea, as the said grants were for lands situate in the vicinity of the "Savannah Farm," owned by said Caswell, and said lands were conveyed by your orator to him, having entered them for his benefit. Your orator was not so solicitous to obtain the grants now in contest or question from the office, for the reasons assigned in his original bill.

Your orator further shows that, subsequently to the 15th April, 1842, he made no entries in the Entry Taker's office at Cleveland, but numerous entries were made by the said William Park Lea, in some of which his name was written in full, and in others not. Whether this was owing to the removal or absence of your orator, to the greatly enhanced value of the land, to the desire on the part of said William Park Lea again to claim it, notwithstanding his alleged sale to Davis, and to obliterate all distinction between William P. Lea and William Park Lea, by making his locations of the 5th and 12th May, 1853, in both forms, your orator does not know, and leaves it to this honorable Court to determine.

In the hope that it may aid such determination, and also with the view of correcting the erroneous impression unintentionally made by your orator in the statements of his original bill, your orator, by his counsel, has prepared the tabular statements, in which he has endeavored accurately to exhibit, in a connected series, all the facts, so far

as they have been discovered by himself or counsel, from an examination of the books and papers now in the office, in regard to the various entries made by your orator and by the said William Park Lea, including the entire routine of obtaining titles, with the exception of such facts as may appear from the original grants, to which your orator has no access, and such facts as may appear, in reference to each of said entries, from the map or plan of the district, which has only been partially examined. These statements are herewith filed, marked Exhibit No. 1 and Exhibit No. 2, the first being a statement of cases in which no alterations appear to have been made in the books or papers, and the second being a statement briefly showing the cases in which no alterations appear to have been made in the books and papers in the Entry Taker's office. And your orator prays that said exhibits may be taken as parts of this bill.

Your orator charges that he had no acquaintance with the books and papers of the Entry Taker's office; that the same were at all times, and for many years, accessible to the said William Park Lea, who also, for some time, had access to the books and papers of the Register's office, and was acquainted with the books and papers of both offices; that he fraudulently obtained and withheld, until he sold to Davis, the grant under which your orator claims title, that is, if he even sold said land to Davis, or had possession of said grant as is claimed by defendants; that it was his interest to make, or cause to be made, the alterations in said grant and grant-book, so as to make it appear that the land was granted to him; that if he, as aforesaid, sold said land to Davis, and held possession of said grant, said alterations were made by him, or by his procurement; and that, in order to give color to his pretended title, he either made or caused to be made, upon one of the grant-books, now in the Entry Taker's office at Cleveland, the record of a grant for the same piece of land now in dispute, purporting to be No. 6605, and purporting to be founded upon entry No. 8739, made by Francis W. Lea, on the 18th October, 1842. Said grant, as recorded, purports to be founded upon the assignment to William Park Lea, by Francis W. Lea, of the certified copy, and purports to have been issued on the 1st day of August, 1848, and a copy thereof is now on file in your honorable Court, marked as Exhibit No. 1, to J. C. Tipton's deposition, and your orator prays that the same may be taken as part of this bill. Your orator was unable to find any such certified copy in the Entry Taker's office, or any other trace of said entry, and does not know whether, in fact, any such grant was ever issued by the State; but it was, he charges, that this fact, with other surrounding circumstances, is conclusive to show the fraudulent conduct of the said William Park Lea, and that he well knew that he had no valid title to the land in dispute, and that the same rightfully belongs to your orator.

In confirmation or elucidation of these allegations, your orator further charges that, notwithstanding his pretended sale to John Davis, the said William Park Lea, previous to the 7th day of De-

cember, 1853, instituted an action of ejectment in the Circuit Court of Polk County, Tennessee, to recover possession of the said tract of land, and in aid of said action, and to stay waste during its pendency, he filed a bill, by his regularly appointed agent, John Hambright, in the Chancery Court at Cleveland, Tennessee, against John Caldwell, James Gray, Alexander H. Keith, and John J. Mastin, in which he alleged that they claimed title to the said tract of land, or a part thereof, "*under a forged deed*" (alluding to the deed under which said Davis claimed title); and, altho' this allegation was denied by the defendants, and it was insisted by them that the deed to Davis was a valid instrument, in the proper handwriting of the said William Park Lea himself, yet the institution of such a suit—if the facts stated in the answer were true—which are not admitted by your orator, shows, what your orator charges to be the fact, that the said William Park Lea was fully capable of asserting a false and groundless claim to the land in controversy. Previous to the institution of said suits the said William Park Lea had visited Tennessee, and had asserted his right to said land, and denied the validity and genuineness of said deed to Davis, and although the bill charging the same to be a forgery was sworn to by the agent of said William Park Lea, it was done after said Park Lea had asserted it to be such, and brought the action of ejectment on that footing; of all of which, said Calloway, Keith, Caldwell, and others of defendants, had notice, as your orator is informed, believes and charges.

Your orator further shows that, among the papers filed in said chancery suit at Cleveland, there is an original power of attorney executed by the said William Park Lea to John Hambright under date 29th July, 1853, and which was executed after the visit of said W. Park Lea to Tennessee as af'sd, in which, among other things, he authorized and empowered the said John Hambright, as attorney in fact, to sell and dispose of the tract of land, now in controversy in this suit by quit claim deed. A copy of said power of attorney, and by the record of said chancery suit will be filed, if necessary, in this case, previous to the final hearing.

Your orator is aware that this strong array of facts and circumstances is opposed by the testimony of J. C. Tipton, in which he states it as his opinion and belief that the letters "ark" in the original grant, filed in the progress of this cause, as well as in the record thereof, are in his handwriting, and that he would not have made said alterations without proper authority. Your orator has no reason to believe that the said J. C. Tipton would have made, or did make said alterations, fraudulently, but he charges that, if they were made by said Tipton, which is not admitted, they were made without authority of law, after the grant was regularly issued in your orator's name, and that such alterations, so made, did not and cannot have the effect to change your orator's legal right to the possession of said original grant, and his title to the land covered by it.

Your orator further charges that there are facts and circumstances

sufficiently strong to show that the said J. C. Tipton is mistaken in his belief. The grant, as recorded in the grant book, appears to be in a slanting, sharp hand, such as said Tipton usually wrote at the time. The original grant, now on file in your honorable court, was, as said Tipton states, written by Euclid Waterhouse, who is a defendant to this suit, but who was, at the time of filling up said grant, the deputy of said Tipton, and the filling up of said grant is in a round hand.

Your orator charges that, altho' said Tipton states he wrote both a slanting and a round hand, yet the letters "*ark*" in the grant now on file appear to be in a round hand, similar to the balance of the writing, while the same letters in the recorded grant, are very similar to the balance of the record of said grants, and are in a slanting sharp hand. Your orator, therefore, charge that there was no necessity for said Tipton, if he made said alterations, to attempt an imitation of the two different styles of writing, and that said imitations are strong circumstances to show that said alterations were not made by him, but were made by "some human hand of design," with a view to prejudice your orator in the ascertainment of his just rights.

Your orator further charges that if said J. C. Tipton made said alterations by proper authority, he ought, at the same time, to have made, and, doubtless, would have made, or caused the Entry Taker to make, an alteration to the same effect in the certified copy; but no such alteration was made, as your orator charges in the certified copy, and it has been admitted by Thomas H. Calloway, one of the defendants, that said certified copy was in the name of William P. Lea, and such is the admission of said Calloway and others in the joint answer filed by them in this cause.

Your orator charges that said certified copy was in the Entry Taker's office at Cleveland at or about the time of the filing of the original bill in this case; that it was afterwards, as your orator is informed, believes, and charges, in the possession of Alexander H. Keith, one of the defendants, or in the possession of another person in his presence and acting for him, that, if the same was returned into the office, it could not be found at the time of taking said Tipton's deposition; and the said Alexander H. Keith, as well as the other defendants, are called upon to state what has become of said certified copy; to produce the same, if it is in the possession of either of them, and if not, to say whether or not the same was in the name of William P. Lea.

Your orator further shows that the opinion was expressed by the said J. C. Tipton, in his deposition, that the figures "47" and the words—"*and the north half of the northeast,*" interpolated in the record of said grant No. 5744 in entry No. 5446, are in the handwriting of Francis W. Lea, a brother of the said William Park Lea, but, as to the correctness of this opinion, your orator is uninformed.

He charges, however, that entry No. 5447 has no connection what-

ever with the land in controversy; that it was made in the name of William Grant for the northwest quarter of section 18, some three miles distant from the land in dispute, and that grant No. 6696 was issued upon said entry to George M. Coleman, assignee of said William Grant, as appears from the records in the entry taker's office.

Your orator further charges that numerous grants which were issued in the name of William P. Lea, or William Park Lea, are in the possession of Thomas H. Calloway, and he is called upon to file the same with his answer, to the end that it may be seen how far the distinction was kept up between the two names, and what other alterations, if any, were made in grants claimed by said William Park Lea.

The said Thomas H. Calloway is especially called upon to produce and exhibit with his answer the original grant No. 6251 issued upon entry No. 6115, if the same is in his possession, and the same was in his possession on the 13th December last, as your orator is informed and believes, as the said entry is for part of the same fractional township, made on the same day, and adjoins the land now in dispute; and your orator has reason to believe that said entry was probably made by him. The original location and certified copy upon which said grant is founded, are either missing from the entry taker's office, or could not be found at the time of taking Tipton's deposition. Your orator charges that said entry, as well as that now in dispute, are contiguous to each other, and lie upon a stream of water as originally shown by the map, but which is now erased, and were both probably entered by him with a view to secure a good "*range*" for his cattle.

If said entry was made by William Park Lea, your orator charges that it was the only entry made by him east of the basis line, on the 5th April, 1842, and that all the other entries made on that day by said William Park Lea were made west of the basis line, and the entries subsequently made by him east of that line were made on the 15th April, 1842.

Your orator admits that the entries which he made on the 15th April, 1842, were, as already stated, near the Savannah farm, but he states that the entry or entries made by him on the 5th April, 1842, were made after he had taken his cattle on or near to the land in dispute; after they had been driven or frightened away by the mountaineers, because he owned no land in that section of the country, and because he was anxious to secure, at the earliest opportunity, after the lands were reduced in price, the right to take his cattle into the mountains. And your orator charges that, after he had made his entry or entries of the 5th April, 1842, he did take his cattle on or near to the land in dispute, and kept them there some time; and that when it was understood he had entered the land, they were not again molested.

Your orator has been informed, and believes, and charges the fact to be, that the said Thomas H. Calloway and Euclid Waterhouse, at

the time of their purchase, and before, had actual notice that your orator was the owner of the land in dispute; and if they had not such positive notice, yet they had such notice as should have put them upon inquiry, and was told previous to their purchase, that William Park Lea was not the true owner of the land, and was cautioned and advised not to make the purchase, as your orator is informed, believes and charges. And, as to all the defendants, your orator charges that the alterations, apparent upon the face of the original grant, and in the books and papers of the Entry Taker's office, were sufficient to put them upon inquiry as to the title; and that for these, and other reasons to be shown upon the hearing, they cannot successfully rely upon the defence that they are purchasers for a valuable consideration, without notice.

Your orator shows the defendants in their answers on file, charge that the said John Davis, and those claiming under him, had seven years' peaceable, uninterrupted, adverse possession of the land in dispute, previously to the filing of the original bill, and previous to the suit at law, as to which facts no answer is asked herein from defendants; but, if any such possession existed, your orator charges, and which charge your orator does require to be answered, that it was a fraudulent possession, under a fraudulent grant and fraudulent deed, the registration of which was postponed until within about the last two years; that the possession of your orator's grant, first by the said William Park Lea, and then by the said John Davis, was fraudulently concealed from him by them; that he never had any knowledge or information thereof, until about the time stated in his original bill, and within the last twelve months, and that, as his cause of action was thus fraudulently concealed, the statute of limitations cannot apply. He further charges that those of the defendants who claim under the deed referred to in their answer, executed to them by William Park Lea, are estopped by his act hereinbefore referred to, alleging the deed to John Davis to be a forgery, from setting up any claim under said deed, either by the statute of limitations, or otherwise, as they had full knowledge of his repudiation of said deed, previous to the purchase from him.

Your orator further charges, that the grant under which the defendants claim, as well as the deeds referred to in their answers, the deed to the said Henry Young, and the deed for the benefit of the Mary's Copper Company, form a cloud upon his title, which it is competent for a court of equity to remove.

Your orator further charges, that the conveyance from Caldwell, Keith, and Mastins, to Polk County Copper Company, it is stipulated that the said Polk County Copper Company, or some of its stockholders, should quiet the title, by extinguishing the claim of William Park Lea, or some such stipulation. The said Keith was vender in this transaction, and, as shown in the answer, he was silently interested as vender also. This charge is made on information and belief, and if it is not stated exactly correct, defendants

are required to state what are the contents of said deed, or agreement, as to the extinguishing the claim of William Park Lea, then in suit as aforesaid, and let the defendants introduce said deed or agreement, with their owner.

Your orator further charges, from information and belief, that the alleged deed from William Park Lea to John Davis, and under and through which defendants seek in their answers to perfect their title, by the aid of the statute of limitations, was in an imperfect state on its face long after its ostensible date, if not when the said Keith, Caldwell, and Mastin, made their alleged purchase for said Davis, in other respects than its want of probate and registration—that *one* of the *ostensible* subscribing witnesses, to said paper, who purports to have witnessed and proved the same, had not, in fact, subscribed his name as witness thereto, until long after the date of said paper, and probably not until after the alleged purchase from said John Davis, and for these reasons the said Caldwell, Keith, and Mastin, exacted and received from Elias Davis—one of the subscribing witnesses, and son of said John Davis, and brother of the other subscribing witness, a bond in a heavy penalty conditioned for the due attestation, probate, &c., of said paper. These charges are made on information and belief, and if they are otherwise than charged, let the defendants state all the facts in connection with the purchase from said Davis, and produce any paper which said Elias Davis executed in relation to said purchase, and the deed from William Park Lea to said Davis, and if they do not produce all the papers because they are out of their power, then let them state the contents of each of them. These facts as to attestation of deed from William Park Lea to Davis, and authentication and registration of said paper, and Elias Davis' obligations as above, the defendants had notice of before they purchased. And inasmuch as said original paper from William Park Lea to John Davis, which is in possession of some of the defendants—it was in possession of said Calloway since the institution of this suit, as your orator understands and believes, will contain internal evidence, by the characters of the signatures of the attesting witnesses in the point of the time of their attestation respectively, and as the same has been attacked as a forgery, it will also contain on its face important evidence, and furnish the only means by which its genuineness or falsity can be proved, the defendants are called upon to produce the same with their answers, and let them state where said deed has been since its execution, to this time; what did Elias Davis do with the same, when he took it out of the office, as shown in the answer of Keith and others, and state its possession down to the filing the same, with their answer to this bill. And each of the defendants claiming any interest in said land, are required to state whether said deed was in fact executed by said William Park Lea, and who it was executed by, and let them specially in this, as in all the allegations of this amended and supplemental bill, not only answer from their knowledge, but their informa-

tion and belief, and specially let the said Calloway and Waterhouse, Samuel Congdon, and the said Polk County Copper Company, say if they, or one of them, or some stockholders and officers of said company, had not heard from the said William Park Lea before, and while the said suits of William Park Lea were pending—and if they did not hear him say, did not he unto them or one of them that said deed was not signed or made by him—was not his deed, and that he denied its genuineness; and also let the said Calloway say that although he was not the principal, if not sole actor and agent, in the said suits, for said William Park Lea, whether said William Park Lea did not consult him, directly or indirectly, either by words or in writing, about instituting said suits or about their management; about employing attorney, or about the witnesses, or about staying waste pending the suit at law; or what other conferences did he have with said William Park Lea or his ostensible agent, John Hambright, in relation to said suits, and for the benefit of the said William Park Lea. And was not said Calloway to be benefited by *said suits*, and if so, in what way?

These interrogatories are thus put because your orator is informed, believes, and charges, that said Calloway did act as agent for or in behalf of said William Park Lea in said suits, as substantially, but very particularly charged in original bill, and which charge is answered so particularly as to confirm the substance of the information your orator had previously on the subject.

Your orator further complaining shows, that the said Thomas H. Calloway was elected entry taker for said Ocoee District as successor to Luke Lea, and that, perhaps he had possession of the books and papers for a time and may have acted, but that he never qualified, and finally declined the office. These are the facts as your orator now understands them; when your orator filed his affidavit, asking leave to file this amended and supplemental bill, his information was that said Calloway had been entry taker complete as successor to said Luke Lea.

Your orator further complaining, shows to your honor that he has never seen the original paper purporting to be a deed from William Park Lea to said John Davis, and he cannot say, therefore, whether the same is a genuine deed or forged, and your orator insists that as the defendants, or some of them, and the said William Park Lea, under whom all the defendants claim, and are in priority of estate, are in conflict as to this important fact, and as it is upon this deed and the operation of the statute of limitations upon it that the title of your orator is sought by them to be defeated, and inasmuch furthermore as an important question of fraudulent concealment of said deed, and fraudulent attestation thereof, and fraudulent probate and registration thereof, and fraudulent possession under the same, and fraudulent concealment of the fact that possession was being held under it, arise in this cause as answers to any possession in which defendants rely or may prove that said deed and all the papers,

agreements, memoranda, or evidence of contract made or entered into by any of the defendants, in relation to said tract of land, and which are sought to be connected or are connected with said deed, or founded upon title emanating from said William Park Lea, should be produced and filed with the answers, and therefore your orator again repeats his call upon defendants to produce and file with their answers all the papers evidencing the compromise or compromises of said suits with William Park Lea, purchaser for said William Park Lea, bond or agreement of said Elias Davis, and the deed to the Polk County Copper Company, and to said Henry Young; and if they have not under their control either of said papers, let them state the contents of any such paper as they cannot for that reason produce, and let them state what has been *paid* on each of the papers mentioned, and *when* and to *whom*.

Your orator further charges that said defendants, or some of them, are now committing great waste upon said land by taking out and removing large quantities of copper ore therefrom; that said land is only or chiefly valuable for its minerals, and that the same constitute the very essence and substance of its value; that the land and timber, as land and timber, without reference to the mine, would be of very little value, but with the mine it is of immense value. Your orator further charges that said waste is being committed by or under a charter or charters of incorporation solely, and that said corporations own no other property or effects other than the small works and improvements on said lands, so far as your orator is informed, and which would not anything like compensate your orator for the waste already committed thereon; and your orator is advised that any redress against the individual stockholders or directors of said corporations to indemnify him for waste would be greatly embarrassed, if, indeed, they could be held, individually, liable at all.

Your orator therefore prays that this amended and supplemental bill may be incorporated with, made part of, and heard with, taken and held, as amendatory and supplementary to his said original bill already on file in your Honorable Court; that the said Polk County Copper Company, Thomas H. Calloway, Euclid Waterhouse, John Caldwell, Alexander H. Keith, Samuel Congdon, Charles Congdon, Jemima Mastin, widow, &c., John J. Mastin, Sarah A. Mastin, Susan N. Mastin, Reuben F. Mastin, Thomas H. Mastin, David C. Mastin, William W. Mastin, and Martha J. Mastin, who are defendants to the original bill, be also made defendants to this amended and supplemental bill, and that the "Mary's Copper Company" be also made defendant to the original and this amended bill, and that all proper process issue against all said defendants, and that they be required to appear and answer the same according to the rules of your Honorable Court. And if the said Henry Young, Charles Congdon, and Lyman W. Gilbert, the two latter named as trustees of said Mary's Copper Company, William Hickock, who are citizens of New York, and, therefore, not made parties to this bill, unless they or either of

them choose to come in and answer, or unless they or either of them should come within the jurisdiction of the Court, and in either event your orator prays they, or such of them as answer or shall be served with process after coming within the jurisdiction, may be made parties defendants with all fit and apt words to charge them as such, and that their all proper process may issue. And may it please the Court to require from said defendants, and each of them, full, true, and perfect answers, to make to all the allegation of the said original bill and this amended and supplemental bill, and that they, and each of them, may be compelled to answer as well from their personal knowledge as from their information and belief, as to each and any of said allegations. And may it also please your Honors to grant to your orator the most gracious writ of injunction to stay waste upon said property against the said defendants, and their servants and agents, or to appoint to manage a receiver of said property, or to make such other order as is most suitable and proper to preserve and protect said property pending litigation, which is so important a cause may be protracted possibly until the whole value of the property will have been abstracted from the mines and distributed to stockholders of said corporations without some protecting remedy furnished by your Honors. And on the final hearing the prayer of your orator is as in and by his said original bill he has already prayed. And if in anything your orator has mistaken his relief, your orator prays your Honor to grant him such relief as is consistent with the rules of your Honorable Court, and consistent with the facts of his cause, and as in duty bound your orator will ever pray, &c.

MEIGS, SNEED, & NELSON,
Sol. for Comp't.

UNITED STATES OF AMERICA,
District of East Tennessee.

This day personally appeared before me, Albert M. Lea, agent of complainant, and made oath in due form of law, that the facts stated in the foregoing bill of complaint, paged from 1 to 28 inclusive, are true as therein stated to the best of his knowledge, information, and belief. ALBERT M. LEA, *Agent.*

Sworn to and subscribed before me, this the 6th day of January, 1855, at office in Knoxville,

D. H. CUMMINGS, *Cl'k.*
By R. H. CAMPBELL, *Dep. Cl'k.*

EXHIBIT No. 1.—*Tabular Statement of Cases in which no Alterations*

Nos. of locations and entries in entry-books.	Dates of locations and entries.	Name in original locations, so far as the locations have been found in the office.	Name in mem. or index-book marked "Francis W Lea, B."	Name in memorandum or index-book marked "Day-Book C."	Name in entry-books where entries are recorded at length.
6288	5 April, 1842.	William Park Lea.	William P. Lea.	William P. Lea.	William Park Lea, B.
6334	do.	Not found.	do.	Wm. P. Lea.	do.
6340	do.	William Park Lea.	do.	do.	do.
6341	do.	do.	do.	do.	do.
6344	do.	do.	do.	do.	do.
6354	do.	do.	do.	do.	do.
6357	do.	do.	do.	do.	do.
6368	do.	do.	do.	do.	do.
6376	do.	William P. Lea.	do.	do.	Francis W. Lea, B.
6400	do.	William Park Lea.	do.	do.	William Park Lea, B.
6401	do.	Not found.	do.	do.	do.
6982	15th Ap'l, '42.	W. P. Lea.	do.	This book only extends to No. 6752.	do.
6985	do.	do.	William Park Lea.	do.	do.
6986	do.	William P. Lea.	do.	do.	do.
6987	do.	W. P. Lea.	do.	do.	do.
6988	do.	do.	do.	do.	do.
6989	do.	do.	do.	do.	do.
6990	do.	do.	do.	do.	do.
7145	do.	do.	...	do.	do.
7147	do.	William P. Lea.	...	...	do. C.
7382	19 Ap'l, 1842.	William Park Lea.	...	...	do. C.
8857	18 June, 1846.	William P. Lea.	...	...	Blank in book D.
9000	5 May, 1853.	William Park Lea.	...	...	William P. Lea, D.
9001	do.	William P. Lea.	...	...	William Park Lea, D.
9002	do.	William Park Lea.	...	...	do.
9003	do.	William P. Lea.	...	...	do.
9004	do.	William Park Lea.	...	...	do.
9005	do.	do.	...	...	do.
9006	do.	do.	...	...	do.
9007	do.	William P. Lea.	...	...	do.
9008	do.	William Park Lea.	...	...	do.
9009	do.	do.	...	...	do.
9010	do.	do.	...	...	do.
9011	do.	William P. Lea.	...	...	do.
9012	do.	William Park Lea.	...	...	do.
9016	12 May, '53.	do.	...	...	do.
9017	do.	do.	...	...	do.
9018	do.	do.	...	...	do.
9019	do.	do.	...	...	do.
9020	do.	do.	...	...	do.
9021	do.	do.	...	...	do.
9022	do.	do.	...	...	do.
9023	do.	do.	...	...	do.
9024	do.	do.	...	...	do.
9025	do.	do.	...	...	do.
9026	do.	do.	...	...	do.
8997	5 May, '53.	do.	...	...	William P. Lea, D.
8848	13 June, 46.	...	...	...	D.
8849					
8890	16 Sept., '46.	...	...	...	D.
8861	10 Sept., '46.	...	...	...	D.

appear upon the Books or Papers in the Entry Taker's Office.

Name in certified copies or certificates of entries, so far as the same have been found in the office.	Nos. of grants as recorded.	Dates of grants as recorded.	Name of granter, as shown in the grant-books, or books containing records of grants.	Remarks.
William Park Lea.	6257	...	William Park Lea.	
6334, 6340, jointly to William Park Lea.	6261	8 Dec., 1842.	do.	One grant on both entries.
6341, 6344, jointly to William Park Lea.	6263	do.	do.	Entries consolidated in grant.
William Park Lea.	6254	do.	do.	
do.	6253	do.	do.	
do.	6256	do.	do.	
6376 and 6400 jointly to William Park Lea.	6262	do.	do.	Entry 6375 covers same land. Entries consolidated.
William Park Lea.	6252	do.	do.	
Not found.				
do.	6264	8 Dec., 1842.	William Park Lea	Entries consolidated.
do.	6259	do.	do.	
William Park Lea.	6265			
do.	On these			
do.	four			
do.	entries.	8 Dec., '42.	William Park Lea.	Entries consolidated.
Not found.	5701	21 Aug., '42.	do.	
...	5766	...	do.	Location marked "conflict."
Not found.	5765	...	do.	
William Park Lea.				
Not found.				
do.				
do.				
do.				
do.				
William Park Lea.				
do.				
Not found.				
do.				
do.				
do.				
do.				
do.				
William Park Lea.				
do.				
do.				
William P. Lea, assigned.				
William Park Lea, assigned to Patrick Graham.				
William P. Lea, assigned to J. Lingerfelt.				

EXHIBIT NUMBER 2.—*Tabular Statement of Cases in which now in the Entry*

No. of locations and entries.	Date of locations and entries.	Name in original locations, so far as found.	Name in mem. or index-book marked "Fran's W. Lea, B."	Name in mem. or index-book marked "Day-Book C."
5446	5 April, '42.	William P. Lea.	William Park Lea.	William Park Lea.
6115	do.	Not found.	William P. Lea.	William P. Lea.
6634	do.	William Park Lea.	do.	Wm. P. Lea.
6983	15th April.	William P. Lea.	William Park Lea.	Nos. only extend to 6752.
6984	do.	do.	do.	do.
6997	do.	do.	William P. Lea.	do.
6996	do.	do.	do.	do.
6991	15th Ap'l, '42.	do.	do.	do.
6992	do.	Wm. P. Lea.	do.	do.
6993	do.	William P. Lea.	do.	do.
6994	do.	do.	do.	do.
6995	do.	do.	do.	do.
7499	30th Ap'l, '42.	William Park Lea, "*ark*" added.	...	...
6625	5 April, '42.	Two Nos. joined in	Erasures.	...
6626	do.	name of William Park Lea.	Chandler, Rogers, & McCamy.	Wm. P. Lea.
8846	No date.	William P. Lea.	This book only reaches No. 8028.	This book only reaches No. 6752.
8998	5 May, '53.	William Park Lea, "*ark*" added.	do.	do.
8999	do.	do.	do.	do.
7499	30 Ap'l, '42.	do.	...	...
8861	10 Sept., '46.	W. P. Lea.	No. not reached.	No. not reached.

Alterations appear to have been made in the Books and Papers Taker's Office.

Name in entry-books, where entries are recorded at length.	Name in certified copies, or certificates of entry, so far as found.	No. of grants as recorded.	Date of grants as recorded.	Name of grantee, as shown in the grant-books.
William P. Lea, A.	Not *now* in office.	5744–47	21 Aug., '42.	William Park Lea, "*ark*" added.
John B. & Thos. W. Mastin, B, *written over erased name.*	...	6251	8 Dec., '42.	William Park Lea.
William Park Lea, "*ark*" added.	William P. Lea.	6250	do.	William Park Lea, "*ark*" added.
William Park Lea, B.	Not found.	5764	...	William P. Lea, "ark" crossed out.
do.	6984, 6997, jointly to	6260	...	William P. Lea, "ark" erased by knife.
do.	William Park Lea.	6258	...	do.
William P. Lea, "ark" erased with knife, B.	Not found.	6219	...	William P. Lea.
do.	do.	6218	...	William P. Lea, several erasures.
do.	do.	6215	...	William P. Lea.
do.	do.	6216	...	do.
do.	do.	6217	...	do.
William Park Lea, C.	William Park Lea, 28th April, '42.	5599	10 Aug., '42.	William Park Lea.
B.	Not found.			
Chandler, Rogers, & McCamy.	William Park Lea.	6255	8 Dec., '42.	William Park Lea.
Francis W. Lea, C.	8846, dated 18th Oct., 1844, 8847, dated 5 March, 1846, assigned.	6463	...	Endorsed on location that grant is to be charged.
William P. Lea, D.	Not found.			
do.	William P. Lea.			
William Park Lea, C.	William Park Lea, 28 Ap'l, '42.	5599	...	William Park Lea.
Blank in book D.	Not found.			

The joint and several answers of Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon, and Lyman W. Gilbert, four of the defendants to the amended and supplemental bill of complaint of William P. Lea, filed in the Circuit Court of the United States for the District of East Tennessee.

These defendants reserving to themselves, all right of exception to the said bill of complaint for answer thereto, say, they admit it to be true that complainant did as stated by him in his said amended and supplemental bill file his original bill in this hon'l court, but they deny, as they are informed, advised, and believe, that complainant had the liberty of the court to file any such amended and supplemental bill as that exhibited by him, and which they are called upon to answer. Since receiving a copy of this bill, through their solicitor, they have written for a copy of the order of the hon'l court at its last term, but have been disappointed in receiving it in time to be seen and inspected previous to the *preparation* of this answer, but they are informed and believe that complainant's amended and supplemental bill exhibits both a departure from the letter as well as the spirit of the hon'l court's order, and exhibits on its face an effort by bill to answer an answer to an original bill, and also by its charges to attack testimony taken under the issue made by the original bill and answer thereto, as well as to introduce one new and distinct subject-matter of litigation, and likewise bring forward many disconnected statements as to matters wholly disconnected, and no ways pertinent to the matter in issue. But in this course of complainant, respondents have been to no great extent disappointed, and for the reasons stated in their former answer, or rather in their answer to the original bill.

These respondents further answering say, it is true that complainant's exhibits, in his said original bill, as certified by the Secretary of State, if said certificates were intended to prove that he had title to or had entered the lands specified in them, they were undoubtedly erroneous, but these respondents do not understand that the Secretary of State by said certificates, intended to assume any such a state of facts, but merely to give a copy of what appeared in his office.

These respondents would willingly believe if they could that complainant, under the influence of what appeared in the office of the Secretary of State, and the manner in which the books and papers in the Entry Taker's office were kept, as well as the alleged absence of some of those books and papers, set up a claim to an immense body of land in a most solemn and emphatic manner, and now, after the proof in the cause had shown the claim was unfounded, abandoned it alone from conscientious motives and a sense of right. Respondents cannot admit, nor do they believe that said claims so set up, were preferred under the influences stated in said original and supplemental bill. In relation to complainant's statement that the examination made of the books and papers of the Entry Taker's

office was a partial one, these respondents cannot admit it, but so far as their knowledge, information, or belief extends, they say and believe the examination referred to was thorough, minute, and most searching, and, as they believe, was carried to all entries, papers, and grants, connected with any entry made either by William Park Lea, or complainant, and also extended itself to other entries with which they were not connected, and respondents believe complainant's exhibits, and the averments in his bill, negative the idea of a partial examination.

These respondents further answering state, that it is true that since the filing of the original bill in this cause, and before the filing of the amended and supplemental bill of complaint, the deposition of Jonathan C. Tipton, former Register of the Ocoee District, has been taken by them, under an order of this hon'l court, but it is untrue that complainant there, for the first time, or during the progress of the examination of said witness, first discovered the books and papers of the Entry Taker's and Register's office were kept in a loose and careless manner; these respondents have reason to believe, and do believe, that complainant was aware of the manner in which they were kept before the exhibition of his original bill in this cause.

Respondents are informed and believe the fact so to be, that either shortly before or during the examination of the said Tipton, some small books, perhaps three or four, were brought into the office by Francis W. Lea, one of the preceding Registers of the Ocoee District, and respondents are willing to admit, and do admit, that said books were brought in by said Lea at the request of complainant, or some one acting for him. These respondents aver that said books, as they are informed and believe, were books properly appertaining to the office and its business, and so evidenced by the entries in them.

Respondents deny that the absence of those books was caused by them either directly or indirectly, and they also state that they contain no evidence which they had any desire to withhold, or which is hostile to their title. Respondents admit that nearly ten thousand entries of land have been made in the Ocoee District, and that there ought to be, taking the locations and certificates of entry together, nearly ten thousand locations, and nearly ten thousand certificates of entry, that many of those certificates of entry and locations are absent from the office, or have been mislaid or lost, they have no doubt of, and therefore admit the same, but they deny that their absence, mislaying, or loss has been caused by them, the entries, or rather locations and certificates of entry now in the office, they admit are in a confused and mixed state.

But these respondents will here bring to the hon'l court's attention, a fact that complainant seems to have been solicitous to keep in the back ground, which is, that the Books B & C, called in complainant's bill, memorandum books, and perhaps some others of the same character, does contain a daily, and so to speak, chronological history of the transactions of the Entry Taker's entry of lands.

Said books are dated, giving the *year*, *month*, and *day* of each entry made, and each day's entries are set down in said books consecutively and in regular order; that is, first the number of the entry is stated, then the enterer's name, and whether he entered as a general or occupant enterer, the number of acres of land included in said entry, and at what price per acre, and the gross price of the whole number of acres entered, there are columns or headings for each day to show the results of that day in the manner stated, but *in all cases* the No. of the entry is put in the column or heading immediately preceding the name of the enterer, and in no case after the enterer's name, as the statements in complainant's bill would seem to indicate: and respondents state and aver to your honor that these are the only books kept in which the number of the entry is *set down in the order of time, and at the time* it was made, that respondents have been informed of, have seen, or believe was ever kept by the Entry Taker in the daily discharge of his duty, and for the purpose of said office, or is even shown by complainant's bill. Such books were kept, the entries in them all have relation to the business of said office, and were necessary to be kept to insure a discharge of the duties of the same. Now, by the aid of these books which complainant seeks to repudiate as office books, he was enabled readily to find the number of entries made either by complainant or William Park Lea, or any other persons on the 5th of April, or on the 15th of April, 1842, and not only the number of the entry, but the quantity entered, and rate of price at which entered, and whether at general or occupant entry; it is true that said Books B & C, and others of like character, did not give the range, section, quarter section, and township, but giving the number of the entry, then all that was necessary to do was to turn to the number of like denomination in the books in which the locations are entered at length and then the range, township, section, or quarter section, or part of the quarter section entered would be found, and, the only thing in which the records of location differ from the other books complained of is, that they give a precise description as to boundaries, &c. of the land embraced by the No. of the entry, as set forth in what complainant terms the memorandum books.

Respondents further answering, say they do not believe that the examination of said Tipton was protracted for the reasons stated in the bill, but in the hope that in an examination on matters, many of them foreign to the matter in dispute, something might perchance be extracted that could be used to throw suspicion over Respondents' title; and in this connection they will state, as they have been informed, and have no reason to doubt the same, the agent of complainant, Albert Miller Lea, was busily engaged nearly the whole time in *arranging* papers, making examinations and searches, and one of the prime causes of examinations being had of the witness, relative to matters in no manner connected with the matter in issue, as Respondents believe, and perhaps it may be, he wished to com-

plicate the matters of complainant's bill. It is untrue that respondents' solicitors were familiar with the papers of said office, as they are informed and believe, but it is equally true that complainant's said agent appeared to be at home among the papers, and by the aid of the books and references, was readily, as his bill shows, enabled to show all the entries of land made by complainant, or William Park Lea, on the 5th or 15th of April, 1842, and to trace them from the location to the books, called the memorandum books, from thence to the books in which the grants were recorded, as well as to the books in which the locations were recorded, and to readily turn to the plan of the Ocoee District, and compare locations, certificates of entry and grants therein, with the name of the enterer, as marked on the plan of said District, and it will be seen by complainant's bill, that as to *all* entries made by either him or William Park Lea, on the 5th or 15th of April, 1842. The title in each case was traced from the location until it ripened into a grant.

Respondent Calloway admits he has a pretty good acquaintance with said books, but that said agent of complainant's was more than his equal. Respondent Waterhouse was present but a short time during the examination, and his knowledge of the books of the office is no better, if as good, in his opinion, as said Calloway's; the other respondents have no acquaintance with the office or its affairs.

Respondents further answering state, as they understood complainant's original bill, the *statement* that he was entitled to the lands described in his exhibits thereto, is not one resting on *implication*, but on express claim; they deny that any such extended examination of the books and papers of the office were necessary to enable complainant to correct his mistake, and to convince him that for the greater portion of the lands that he had in the most solemn manner declared that he had entered, had in fact been entered by William Park Lea. Complainant in his original bill claimed to have made various entries on the 5th of April, 1842, and it turns out, according to his own showing, that by no possibility did he make any entry on that day, unless he made the entry in dispute, all his entries having been made after that day, as shown by himself. These respondents, therefore, cannot admit that such an extended examination was necessary to ascertain complainant's rights to land entered on that day. They also admit that complainant in his said original bill did claim title to the lands referred to in the certificate of the Secretary of State, to which in fact he had no title, the right and title being in William Park Lea, or those to whom he may have subsequently sold the lands.

Respondents also admit as true, that complainant is mistaken in the statement in his original bill, that the distinction therein mentioned between his entries of land and William Park Lea's entries, had been uniformly observed as stated in said original bill.

Complainant softens down the correction of the vital errors in his said bill, by calling the statements therein made *mistakes;* respond-

ents will not spend words about the very conscientious and accurate idea complainant seems to have as to what constitutes a mistake.

Yet they may be permitted to remark, and say, that a slight examination surely ought to have been made as to how the facts were before making so grave and important statements.

These respondents further answering admit that complainant's statements as to the various *provisions* of the several acts of the legislature of the State of Tennessee, passed for the disposal of the lands in the Ocoee District, and prescribing the duty of the Entry Taker, &c., and substantially correct that the routine of entering lands in said office is as stated, and that the character of books set forth were kept by the Entry Taker. Complainant's entire statement on these several matters they believe to be true, but in the particulars hereafter mentioned, in which particulars said statement is erroneous as respondents are informed and believe, that before the enterer's name was entered on the plan of the district it had to be ascertained, as stated in their answer to the original bill, who the enterer really was, that twenty locations may have been received for the same piece of land, in which case no name was entered on the plan of the district until the real enterer was ascertained, as stated in said answers; that being done, his name was placed in the books, called by complainants the memorandum books, placed on the plan of the district, and afterwards, within the time prescribed by law, his location was spread out at full length in the books kept for that special purpose; when the entries were not numerous in the course of the day, and there were no conflicts, the Entry Taker could and may have entered the enterer's name on the plan of the district, and have recorded the location at full length all on the day of the entry, but such a course could not, from the very nature of things, have occurred on the 5th April, 1842; perhaps some thousand or fifteen hundred entries were made on that day, and the offices after it remained closed until the 15th of the month to enable the Entry Taker to determine what entries had been made, by whom, and to bring up the books of his office; all this is the fact as these respondents are informed, advised, and believe. The other particular in which the statements of the bill referred to are erroneous, consists in the omission to state that the Entry Taker kept the Books B and C, or similar books to them, styled by complainant memorandum books, which books were of the description hereinbefore specially set forth. These respondents aver that as they are all informed and believe such books or book was kept and used, regarded and treated, as an office book, and related solely to the affairs of the office; such has been the understanding and belief of respondents Calloway and Waterhouse, and the other respondents, from information, having no personal knowledge, believe the facts to be as stated.

These respondents further answering say they admit as true that since the entry of the land in dispute the offices of Entry Taker and Register have been consolidated by law, and that the books and

papers of both offices now are, or ought to be, in the office of the present Entry Taker of the Ocoee District.

And these respondents further answering say they admit as true that Luke Lea, while he was Entry Taker, and they aver he was such on the 5th of April, 1842, complied with the requirements of the law as to his duties in all particulars; that he had books as described by complainant in which were recorded at length the locations for lands entered. Said books do contain, as respondents believe, in regular succession all the entries made in said office, consecutively numbered and recorded at length with the exception of the last book, in which a great many blanks are not filled up, and there may be similar cases in some of the other books or previous ones for aught these respondents know, or have such information as to predicate a belief on.

Respondents further answering state, that as they have before in substance, that the charge that Book B or Book C, called by complainant a memorandum book or books, is untrue as they have before stated; it was used in the office as an office book for the purpose of the office, had relation to and evidenced the business of said office, and was regarded and so treated by the Entry Taker and others, as they are informed and believe; that it was in ex*his*tance as an office book both on the 5th and 15th of April, 1842, as they are informed and believe; it is true said book is not so large as the other books set forth and described by complainant, but it is untrue that it is not well bound; it is, as they believe, well bound for the size and description of the book, and they do believe that the Entry Taker both procured and used said book as an office book.

It is true that said book is marked and entitled "Day Book," and the letter "B" is marked on it; and it is also true that the name "Francis W. Lea" is written on one part of its lid, but no one could infer from anything written on the lids of said book, or from anything contained in it, that the book was either the property of Francis W. Lea, or appertained to his private business. Said book, from its titles and contents, relating to entries of land as made regularly on each day by persons indiscriminately and pertaining to the business of the office, could not be the private property of Francis W. Lea, or kept by him as his private book; to so insist, with all due deference, respondents believe is at war with common sense. These respondents deny that said book does not purport to be an office book, it car*rys* with and contains within its leaves, as before shown, the unmistakable stamps of being official. Complainant charges that it is not such a well bound entry or record book such as the statute requires.

Respondents are advised that it is not proper for them to argue this question as complainant has the matters of his bill, hence, having given a description of the book and its binding, they will leave the question as to whether the statute in question is mandatory or directory in its character.

These respondents further answering state they are unadvised as to the communications that may have taken place between complain-

ant's agent, Albert M. Lea, and his counsel, with Francis W. Lea, in relation to Book B, but if said Francis W. Lea stated to them that Book B was not an office book, and kept by Luke Lea when Entry Taker, then they believe said Francis was in error, though he be and is a son of Luke Lea, and successor to Tipton as register, and is familiar with both offices, both before and since they were united, which is true; and also, if said Francis said that said book was not the original book, but only a copy from the original, they also believe he was mistaken, and that it was not copied from a memorandum book kept by said Entry Taker, Luke , but as they believe was the original book and kept by said Lea, but not what complainant designates it, a memorandum, but a genuine office book, all which respondents have every reason to believe to be true. It may be that Francis W. Lea, at the request of complainant's counsel at the time and in the manner stated by him, brought into the Register's office another book marked Day Book C, and it may be that said Francis W. Lea stated this to be the original book, and that Book B, so much complained of, was a mere copy from it; and respondents admit that said Francis did state it was Book B, a mere copy of Book C, but on inspection of both books, as well as other facts, leaves no doubt in the minds of respondents that in this assertion said Francis was in an error. But these respondents here stated to the Hon'l Court that, in both of these Books B and C, it appears that entry *number* 5446 was made by William Park Lea, on the 5th of April, 1842, that it covered 80 acres of land, and was made at general entry at one cent per acre.

Respondents state to your honor that both of these books are kept and marked alike, that the erasures in them are few, and where they do exist show that they were mere corrections, and in one or perhaps more places where there are erasures a reference is made to another book, the book of locations, and there the same erasures are made in the book of record of the locations, and the reason is given, which respondents do not now distinctly remember, but believe it to be that those erasures are as stated, in neither of these books, that respondents are advised of is there any alteration that concerns or affects complainant.

These respondents, further answering, state that it is untrue that the name of William Park Lea was written in the said books B and C, complained of by mistake, but it was there written after No. 5446, to show that he was the enterer of the land covered by said number, which is the land in dispute; it is also untrue that there was any subsequent change in the name, it still stands in the name of William Park Lea on said books. It is true that there is in said office a location for some land, and they believe it to be either in the handwriting of James Armstrong Lea, or his brother, Francis W. Lea; they admit that said Armstrong on the 5th of April, 1842, and before and after that date, was a deputy in said office, under his father, Luke Lea, and they admit, for they have no doubt of the

fact, that said Armstrong wrote many locations for various persons, and are willing that complainant shall have the benefit of their admission; that he wrote the location for the land in dispute and do admit the same, though it is proper to state that some of respondents have great doubt as to whether he did in fact write said location. But respondents do here most positively deny, from information and belief, and from facts set forth in their answer to the original bill, and from additional facts which will be hereafter stated, that said location was written out for complainant, or that the land covered by it was entered by complainant or for him. Respondents here deny and aver from such undoubted information and belief, the facts stated in their original answer, and the facts which will be hereafter brought to the notice of the Honorable Court, that by the name William P. Lea in said location is meant the complainant, but they aver that by the same was meant William Park Lea, that complainant was never regarded as owner of said land at any time, or exercised any acts of ownership over it, never paid one cent of taxes for the same, that William Park Lee was regarded as the owner of said land, exercised all the acts of ownership over the same, sold it and conveyed it as his property, and he and his venders under him and those claiming under them, have been in the open, hostile, and adverse possession of the same, for more than seven years since the issuing of a grant for said lands, and for more than seven years previous to complainant's instituting his action of ejectment in this Hon'l Court, or the filing of his original bill, which defence of the statute of limitations of seven years, and of being purchased for a valuable consideration without notice, and the several matters of defence relied on and set up by them in their answer to the original bill, they pray to have the full benefit and protection of, as is therein prayed, in as full and ample a manner as herein set up, word for word, and respondents reaffirm their said answer to the original bill, and adopt the same.

And respondents, further answering, state: if it be, and they have so admitted that the location in question is in the handwriting of James Armstrong Lea, it was no part of his duty, as assistant or deputy to his father, to write locations, and in no respect was an official act, it being the duty and practice of enterers of land to prepare their own locations. And in this connection, respondents will state, as they are informed and believe, every other location on file in said office for lands entered by complainant is either in complainant's own handwriting or that of his brother, P. J. G. Lea; that his said brother lived in a house immediately adjoining the Entry Taker's office; was familiar with the forms of the office, and a ready penman; it seems, therefore, incredible that complainant either did or had occasion to call on another for reasons stated by him.

Respondents, further answering, admit there is a plan of the Ocoee District of the structure and description stated by complainant, and subdivisions named.

Respondents state it is true that on the said plan, and on the land in dispute, are the words, "Wm. P. Lea, G. E." 1st. They aver that this means and denotes that William Park Lea was the enterer of this land at general entry, at the sum of one cent per acre, and not that complainant was the enterer of it; it is also true that the piece of land so marked on the plan of the Ocoee District covers the very piece of land covered by Entry No. 5446, which number, in the Books B and C, is set down as made by William Park Lea. It is true that the location for the land in Book A, which is a book of locations recorded, that said location is entered at full length, without erasure or interlineations in the name of William P. Lea, but these respondents here aver that by William P. Lea is meant William Park Lea, and not complainant.

And in further confirmation of this averment, they will state that papers, documents, and deeds are in existence, which demonstrate that William Park Lea, frequently, if not always, signed his name William P. Lea.

These respondents further answering deny, from information and belief, that the words referred to on the plan of the district, "Wm. P. Lea, G. E. 1ct." is in the handwriting of one of the entry taker, Luke Lea's sons.

It is also true, as respondents admit, that on the same page of the map there are four entries marked to or intended to designate William Park Lea, two of them in his name at full length, and two of them abbreviated thus: "Wm. Park Lea," but it would have been proper for complainant to have proceeded further, and informed the honorable court, that on the same map, the plan of the Ocoee District lands are noted on it, the title to which has never been denied to have been in William Park Lea—thus W. P. Lea, Wm. P. Lea, &c., and if there be anything in this writing, it proves that the abbreviations set out by complainant "Wm. P. Lea" &c., were meant to designate William Park Lea.

These respondents do not know how the fact is of their personal knowledge, but they are informed, and believe, that the four entries specially alluded to by complainant, are neither of them, as marked on the map or plan of the district, are in the handwriting of William Park Lea; and it is untrue that any distinction was kept up and carried into the plan of the district, &c., as set out by complainant in his original bill, and complainant having in one part of his supplemental bill admitted his error in making said statement. Respondents are surprised at seeing the same charge in another part of his bill, with the modification that in the earlier entries said distinction was observed; said statement is, as respondents are advised, informed and believe, also untrue, in its modified shape.

Respondents, further answering, say that it is untrue, and is also evidenced *on* both book B and C, that any correction is made in either of those books as to who was the enterer of No. 5446, said books, both of them show the enterer to have been William Park

Lea; his name still stands in them as the enterer written out at full length without erasure or interlineation; the location is as before stated herein, as also the record of said location in book A, and the words in the plan of the district as hereinbefore stated, but respondents deny, as they have before done in their original bill, and in this answer, that the name or words on the map, in the original location, or in the record, was intended to denote complainant, but was intended to denote William Park Lea, which denial they believe to be most abundantly fortified by the facts referred to in the answer to the original as well as those adverted to in this answer, and others which will also be brought to the honorable court's consideration before closing this answer; and respondents also deny that there was any correction made by the entry taker, as they are informed and believe, from the reasons and facts so often referred to, of book B or C, by the entry taker, by reason of the means stated by complainant or on the personal knowledge of James Armstrong Lea. And respondents here beg leave to call the honorable court's attention to the round and positive statements of complainant's bill, not predicated on information and belief, and that by a person swearing to the bill, who respondents are informed was not even in this section of the country at the time, and hence could have had no personal knowledge of the facts.

These respondents further answering, will, in the first place, dispose of the entries made on the 15th of April, 1842, as set out in the bill, to have been made by complainant, and they admit, and that after a most thorough examination of the books of the office, that complainant did make nine entries of land on that day and no more; one of the locations on which these several entries was made is in the name of William P. Lea, said location being, as respondents are informed, in the handwriting of P. J. G. Lea, a brother of complainant, and the same brother that respondents have before referred to as living adjoining to the land office; another of said location is in the name of William P. Lea, and in the proper handwriting of complainant, as they are informed and believe; another of said locations is in the name of Wm. P. Lea, and in the handwriting, as they are informed and believe, of said complainant's brother; three other of said locations are in the name of William P. Lea, and in the handwriting of complainant's said brother, as they are informed and believe; the other three locations are in the name of William P. Lea, and in the proper handwriting of complainant, as they are informed and believe; all these several locations for land are marked on the plan of the district in the name of W. P. Lea, as respondent Calloway states on examination, if he has made no mistake, and he does not believe he has, and the other respondents not having examined said plan of the district, adopt his answer, and believe it to be true; on the memorandum book so called by complainant, these entries are set down all in the name of William P. Lea, except entries No. 4984, and 6983, which are in the name of William Park

Lea; and it appears from an inspection of the books containing the record of grants, that grants issued for the whole of the entries on the 7 & 8 days of December, 1842; except entry 6983, entry No. 6995 covered by grant 6217; entry No. 6996 covered by grant 6258; entry 6992, covered by grant 6218; entry 6994 covered by grant 6216; entry No. 6993 covered by grant 6215; entry No. 6991 covered by grant 6219; entry No. 6997 covered by 6260, and entry 6984 covered by the same grant; entry 6983 covered by grant 5764; grants Nos. 6258, 6218, 6260, 5764, appear to have been filled up as appears on the book of grants in the name of William Park Lea, the *ark*, or rather the letters ark occurring after the capital P in the middle name are erased so as to make the grant read William P. Lea as it now stands. It is admitted that in the record of book of locations, marked B, all of the nine entries appear in said book to have been written out at full length in the name of William Park Lea, and the letters "*ark*" after the P in the middle, seems to be erased in the five numbers specified by complainant in his bill, thus leaving the record of locations thus erased to stand in the name of William P. Lea; and the certified copies of location, as far as discovered, are in the name of William Park Lea; this last circumstance shows that the corrections must have been made after the issuance of the certified copies. The grant for entry 4991 is in the name of William P. Lea, without erasure, as also the grant for 6993, as also the grant for entry 6994, as also the grant for entry 6995; entries Nos. 6984 and 6997, as before stated, are both covered as before herein stated by grant No. 6260, this grant as on the grant book appears to have stood once in the name of William Park Lea, but the "*ark*" is erased, so as to leave the grant in the name of William P. Lea; the grant for 6996 seems to have been written in the name of William Park Lea, and the "ark" is erased, so as to leave it in the name of William P. Lea; the grant for entry 6992, appears to have been in the name of William Park Lea, the "ark" is erased, leaving it in the name of William P. Lea; the grant for entry 6983 appears to have been in the name of William Park Lea, the "*ark*" is erased so as to leave it in the name of William P. Lea. Thus the hon'l court will perceive that the grant book shows that William P. Lea is the legal owner of the whole nine tracts of land which he truly states he entered on the 15th day of April, 1842, and in the grants, four of them, covering five of the entries, the word "ark" is erased, leaving the grant to stand in the name of William P. Lea, the other four grants stand in the name of William P. Lea without erasure; for whose benefit was this done? for Park Lea's benefit or complainant's? Complainant says he made no entries after the 15th of April, 1842, which respondents admit is true.

Complainant states in answer to respondents' defence, or set up in their answer to the original bill, that he has no recollection of having ever gone to the register or entry office in company with William Park Lea, or with any other person, for the purpose of having his

grants corrected, and he calls for full proof; in answer to this, respondents refer to and adopt their original answer, and in addition to that they will here state that they have no doubt that the correction of said grants was brought about by complainant and William Park Lea, having a difference as to their respective rights, and that while the matter was fresh an examination was made and correction had by the act of both of them; the very shape the grants are left in demonstrate this.

Now your respondents further answering as to those nine entries, will proceed to state and so aver, and, as will appear by a deed from Wm. P. Lea, and so signed, the present complainant, as they are informed and believe, made on the 11th day of February, one thousand eight hundred and forty-six, he conveyed these whole nine tracts of land to his brother Caswell Lea, who owned the Savannah farm, near or not far from which they lay; and also in said deed conveyed one tract of land which he did not own, as they are informed and believe, but which was entered by Francis W. Lea, the tract not owned by him being the southeast quarter of section 31, fractional township 2, range 3 east. Respondents file with his their answer a copy of said deed as taken from the Register's office of Polk County, having been duly proved and registered; it is marked Exhibit 1, to Thomas H. Calloway and others, answer to supplemental and amended bill of William P. Lea, and is prayed to be taken as a part of this answer. Respondents also file with this their answer Exhibit 2, and pray that it may be taken as a part of the same, which gives a description of range, township, &c., and shows what range, township, &c., each entry was in.

Respondents having now disposed of the entries made by complainants on the 15th day of April, 1842, and shown most conclusively that all corrections made as to those entries were in his favor and none against him, and that he has long since sold and conveyed the same to his brother Caswell, for whose benefit he says he entered them, and the respondents believe the fact so to be; these respondents are required to answer as to the entries made by William Park Lea, on the 15th of April, 1842. This respondents will proceed to do, though complainant has received and enjoyed all the lands he entered, they cannot perceive what right he has to be inquiring about William Park Lea's land to which he sets up no claim, unless it be in the hope of producing complexity and imposing great labor on respondents; this he has done, and, as respondents submit to the Hon'l Court, most unwarrantably.

It is true that complainant and William Park Lea's entries of land on the 15th of April, 1842, amounted both together to eighteen in all. It is true that William Park Lea was the actual enterer of nine out of the 18 entries.

Respondents proceeding to answer in detail as to these nine entries of William Park Lea, and which are admitted by complainant to be his, say that entries 6982 and 6985 are covered by grant No. 6264,

to William Park Lea; the original locations are in the name of W. P. Lea, in the *record book of locations* gives the name of William Park Lea in full, thus showing most conclusively that no such distinctions as complainant insist on was observed, or in other words that original locations in the name of W. P. Lea were understood, in the *Entrey* Taker's office, to denote William Park Lea, and so recorded at length in the location record books, and that grants issued in conformity thereto; the certificates of *entrey* as to these two entries cannot be found, and respondents are unadvised and have no knowledge or information in whose name they were; the number in what complainant calls memorandum book C, close at 6752, and there is no name, therefore, or number for these entries in that book, but in memorandum book B the entries are in name of William P. Lea, which complainant says was his peculiar cognomen; yet notwithstanding this, and that the locations are in the name of W. P. Lea, also claimed or sometimes being his cognomen, the land is admitted to be properly granted to William Park Lea. The original locations for entries 7147, 6986, 6987, 6988, 6989, 6990, and 7145, are all in the name of W. P. Lea, except 6986 and 7147, which are in the name of William P. Lea, and several of them, as respondents are informed and believe, in the proper handwriting of William Park Lea, and on all these entries and locations in the name of W. P. Lea. Grants issued to William Park Lea, and, as complainant admits truly, most rightfully, for the land covered by said locations, complainant gives the No. of the grants correctly. Respondents have not been enabled to find the certified copies of the entry as to entry 6986, but 6987, 6988, and 6989, are in the name of William Park Lea.

The original locations, though in the name W. P. Lea, are recorded in the book of locations in the name of William Park Lea, yet complainant admits them to be the lands of said William Park Lea. Memorandum book C, for the reason before stated, contains no entry of them, but in the so called memorandum book B, they are shown to have been entered by William Park Lea; as to No. 6990, they have found the certified copy of entry, and it is in the name of William Park, as well as the grant, and book B. Memorandum book shows the entry to have been in the name of William Park Lea; the only remaining Nos., to account for in all things, are 7145 and 7147; the first of these numbers 7145, has the original location in the name of W. P. Lea; the record of the location is in the name of William Park Lea, and the grant in his name; the certificate of location, respondents have not been able to find, in so called memorandum book B, the entry is set down to William Park Lea; as to No. 7147, the original location is in the name of William P. Lea, the record of the location is in the name of William Park Lea, and grant is to the said William Park Lea, no certificate of entry is found.

Respondents thus show to your honor that, according to the facts, and complainant's own admissions, grants issued to William Park Lea for these nine entries.

The location being as stated, and the certificates in the name of William Park Lea, the respondents beg leave to suggest, afford a key to unlock the whole difficulty in this cause, if there be any at all; the location was the first step towards entering lands, and had to be prepared by the enterer, for the twofold purpose of showing what land was proposed to be entered, and secondly, to demonstrate or make known to the Entry Taker, who was the person that proposed to enter the land; if there had been such an understanding as complainant charges, between William Park Lea and complainant, as to how they were to sign their names, in order to distinguish their respective lands at the time said locations were written, why was it not observed? The matters hereinbefore stated show that none was observed, and perhaps not thought of until after the locations *had been filed and the lands entered;* that after this was done, corrections were made is shown in another part of this answer, in no less than five cases in the record of locations, and in four of the grants, as they appear on the Register's book, and all in favor of complainant, this correction must have been brought about by the parties, and must have been principally so done by complainant, though he now professes to not recollect it, in view of all the circumstances hereinbefore stated on the subject. Respondents admit that the Nos. of the grants embracing the lands covered by the nine entries, are correctly described by complainant. Respondents having disposed of the nine entries of William Park Lea, on the 15th of April, 1842, they append to their answer Exhibit 3, which is a tabular statement, embracing, in one view, the facts hereinbefore stated relative to No. of entries, locations, in whose name, certificate of entry, in whose name, grants when issued, and in whose name, &c.; it covers the whole 18 entries made on the 15th of April, 1842, and they pray that it may be taken as a part of their answer.

Respondents, before proceeding to answer in relation to the entries made by William Park Lea on the 5th of April, 1842, beg to say, with all due deference, that they think complainant ought to have said that out of the sixteen made on that day, he claimed one, No. 5446, and that if he did not enter the land covered by that entry, he made an entry on that day. Yet such is the fact. Respondents are therefore much astonished to hear so many charges about entries that he, complainant, is no way connected with or claims to be, and to see so imposing an array of tabular statements. But respondents will procced as to the 5th of April entries, to give all the information and answer they can.

They will first direct their attention to Entry No. 5446, and here they beg leave to adopt and refer to all they have said in their answer to complainant's original bill on this subject; this is the only entry he claims to have made on the 5th of April, 1842, which in respondent's opinion should be steadily kept in view in order to a full appreciation of the several matters which they will proceed to set

forth, which are all utterly at war with the idea that on that day complainant made any such an entry, or any entry at all.

Complainant charges in his original bill that the entries of land made by him on the 5th and 15th of April were for grazing purposes. Complainant then lived on the Savannah farm; all the entries made by complainant on the 15th of April were adjacent to or not far distant from that place; the land in dispute is some eighteen miles from the land so entered by him, and rough, rugged, and high ranges of mountains lie between the said lands and the land in dispute; and thus the idea that the land in dispute was entered on the 5th of April in connection with the lands of the 15th of April for grazing purposes, is borne down by the distance between, nature of the country and locality of the land in dispute; again, respondents have caused an examination of the tax lists of Polk County, and they find that complainant has never returned or paid taxes for a solitary acre of land in the Ducktown District of county where the land in dispute is situate, but they do find that he returned and paid taxes for lands in the district of county where entries of the 15th of April are located. Again, in February, 1846, as before shown, complainant conveyed these lands last mentioned to his brother, Caswell Lea, and he tells us in this bill the lands were entered for and intended for grazing purposes for the benefit of Caswell Lea, why then did he not convey all he had entered for that purpose? Why was the land in dispute reserved? No reason is assigned. Complainant nailed to the wall by such cogent facts, hostile to his pretentious attempts to wade their force by saying that the disputed land lay contiguous to a stream of water, and was "*probably entered by him* with a view to secure a good range for his cattle," from positive affirmation, in the original bill, he has descended to *probabilities*, and those based on his opinion. In all cases where complainant has given tangible ground, his claim has been overwhelmed.

To support the idea that the entry was made to secure a range for his cattle, he states roundly and positively, that the entry of the 5th of April, 1842, of the land in dispute, was made "AFTER he *had taken his cattle on or near to the said land in dispute*, AFTER *they had been driven or frightened away by the mountaineers* BECAUSE he owned no land in that section of the county;" that "he was anxious to secure, at the *earliest* opportunity after the lands were reduced in price, the right to take his cattle in the mountains." Here is something specific. The date of his entry, if he is to be believed, is made certain, and the reason of it, by reference to the fact that his cattle were driven from out of the country because he owned no land in the neighborhood of the disputed land. After this, he entered the disputed land. Now, in answer to this, your respondents aver as true, on information on which they place the most undoubted reliance and belief to be accurate in all its substantial parts, that it is true there is such a stream of water as described by complainant; it is also true that in the year 1844 he had his cattle in the range, in some seven

or eight miles, on Rocky Creek, from the land in dispute; it is also true, that the cattle were run out by the persons he chooses to term the mountaineers (but a kind and hospitable people). Respondents aver in manner aforesaid, that it was in 1844, and after the 5th of April, 1842, that this took place; and this is evidenced by the fact that complainant refused to pay his herdsman because said cattle were run out, and said herdsman sued and obtained a judgment against him, in 1844, for his services. No comment is made. In further corroboration of the fact that complainant had no land in that region of country, they aver, on information and belief, that after his cattle had been frightened and run out of the country, he applied to Francis W. Lea, who owned lands at various places, extending from the vicinity of the Savannah farm to Ducktown, who gave him a written permission to range on his lands. They were never afterwards disturbed; which fact is also hostile to complainant's claim. But in this connection, respondents aver, on information, that complainant never at time brought or had his cattle brought on to the land in dispute, or in its immediate range; that he never put up any claim to, or exercised, or attempted to exercise, act of ownership over, the land in dispute, until the claim was preferred by his bill, or very shortly before it, as is truly stated by respondents in their answer to the original bill.

Respondents will further state that, as they are informed and believe, there was an occupant claim on said land, which precluded it from general entry by any one at the time it was entered, without the concurrence of the occupant; and they are informed that said occupant was proved and assigned to John Davis, in due form of law; and they are further informed and believe that said John Davis was going to enter said land, under said occupant, after said William Park Lea had entered it, and this led to the purchase embraced by the deed of Park Lea to said Davis; and surely complainant would have known or heard something of this occupant right, and would hardly have entered such land for grazing purposes.

Respondents, having disposed of entry 5446, will proceed to answer, in relation to the other entries made by William Park Lea on that day, the 5th of April, 1842. Respondents have been unable to find but sixteen entries made by said Lea on the day alluded to, the entry in dispute being included to make out that *that* number.

Respondents state to the honorable court, that through their co-respondent Thomas H. Calloway they have made a laborious and searching examination of all the books and papers in the entry taker's and register's office of the Ocoee District. They have prepared a tabular statement clearly and concisely setting forth the results as evidenced by the written documents referred to; it contains eleven columns, each column exhibits in connected order the matters set forth under it, and taken as a whole in one view presents to the eye the situation of the title to the whole sixteen entries as appears from the written evidences in said office.

The first column gives the No. of each entry or location, and the second column gives the date of each location or entry; the third column gives the *name* of the enterer as set forth in the original location so far as they have been found; the fourth column gives the name of the entered as set down in index or memorandum book marked Francis W. Lea, B; the fifth column gives the name of the entered as set down in memorandum or index book marked Day Book C; the sixth column gives the name of the entered as set down in the entry book used to record the enterers' names in full; the seventh column gives the name of the enterer as set out in the certified copies of entries, so far as they have been found; the eighth column gives the No. of the grants as recorded; the tenth column gives the name of the grantee as shown on the grant books; the eleventh column contains statements of things for which it was not deemed necessary to prepare separate columns. It is marked "Exhibit No. 4," and is appended to their answer and prayed to be taken as a part of the same.

Respondents Calloway says it is correct in its details as shown by his examination, and the other respondents believe it to be so, and adopt it.

Respondents further answering say it will be seen that all the original locations have been found in the office but one, and the missing one is No. 6115, and these respondents have been informed and believe that said location was in the office, and in the name of William Park Lea, and was shown to and seen by complainant's agent, Albert Miller Lea, but cannot now be found; from information he was the last man that had it; neither of respondents have any recollection or belief as to having ever at any time seen it; the locations are in the names of the persons and in the name set out by Exhibit No. 4, before referred to, and it may be and respondents believe the fact is so that all said locations, 6115, not found are in the handwriting of William Park Lea, and at full length, except No. 6576, which is in the name of Will P. Lea, and No. 6534 which is in the name of Will Park Lea; the location for the disputed land they have already averred as to the handwriting.

In answer to the special exceptions and charges founded thereon to particular entries made by William Park Lea on the fifth of April 1842, respondents state that as to entry 6626, this number as also No. 6625, there is but one *location* for; on one end of the location it is No. 6625, and on the other end *said location* is marked No. 6626; the original location is in the name of William Park Lea; on Memorandum Book B, opposite to No. 6625, is first written down to John Mastin; this is then scratched out, or rather marked out, and at the end opposite to the same number, William P. Lea is inserted; in Day Book C it is left standing to John Mastin; opposite to No. 6626 in Book B, is the name William P. Lea and a pen run through it, and in Book C, opposite to 6626, it is left standing to William P. Lea.

As to the exceptions and charges as to entry No. 6115, it is true the name of William Park Lea appears in the entry book of recorded locations to be scratched out or erased with a knife, and John B. and Thos. U. Mastin written over it; but the grant is in the name of William Park Lea, clear and without erasure. Respondents have before stated their information and belief as to complainant having seen said original location for this piece of land. The certificate of entry is in the name of William Park Lea, and the word ark seems to have been *added* after the letter P, either at the time of writing said certificate or afterwards, and the name of William Park Lea erased on the record of the locations, and the above name of the Mastins inserted.

Does complainant mean to insinuate that respondents or either of them have had any agency in it? If so, it most unfounded, to use no harsher expression.

But these respondents do verily believe that the grant for No. 6115, properly issued to William Park Lea, and the erasures plainly show, that some one was seeking to embarrass and throw suspicion on his title, or to effect some other sinister design.

Respondents, from information and belief, deny that complainant ever had any right, claim, or title to said land, or even that he ever pretended to set up one. But in the bill to which this is an answer, he suggests that these alterations and the issuing of the grant might be to his prejudice, not having yet made up his mind as to whether he will set up a claim or not.

These respondents do not wish a protracted litigation with complainant, but if there must be litigation, they want it in legal form and with the proper parties; and, therefore, respondents here respectfully insist that complainant has no right, in law and according to the principles and practice of a court of chancery, to introduce a new and distinct ground of complainant, in what he is pleased to term his amended and supplemental bill. The original bill was filed as ancillary and in aid to his action at law for entry No. 5446, and not for No. 6115; again, complainant cannot, either by supplemental or amended bill, make a new and different case from the one set up in the original bill, as they are advised, and these matters of objection, respondents set up by way of defence to all relief or proof, &c., that complainant may seek in relation to entry No. 6115, and pray the same benefit of such objection by way of answer, as they would have by plea or demurrer formally put forth and relied on.

And they here take occasion to say that by far the greater portion of complainant's amended and supplemental bill, as they are advised, is open to these defences, but they believe complainant wished to harass and worry them into buying their peace, and, therefore, preferred to answer his entire bill, leaving the whole question of its extraordinary character to the consideration of the honl. Court, and they were the more prompted to this course by the grave insinua-

tions against them, many of its statements raised by implication, though not openly avowed.

Respondents' Exhibit No. 4 contains all the information they can or are able to give in relation to the entries of the 5th of April, 1842, that is not hereinbefore given, and, as before stated, they make it a part of their answer, as much so, as if herein incorporated. And respondents here beg leave to state, that with all due deference it is most apparent that no such distinction as complainant in his original and the present bill insisted on was observed, and that on the 5th of April or on the 15th, 1842, no such agreement could have existed, that the mistakes or errors that had occurred were discerned after the 15th of April, 1842, and lead to their correction, that as shown, five corrections were made in favor of complainant by striking out "ark," and two in favor of William Park Lea, by adding "ark." And respondents beg leave to state that not only the papers referred to in this answer, but also others, will most abundantly show that William Park Lea observed no regular uniformity in the signature of his name, sometimes signing it William P. Lea, at other times William Park Lea, at other times Wm. Park Lea, at times Wm. P. Lea, &c. Complainant's whole case rests whether by William P. Lea in the location, and certificate of entry was meant William Park Lea; he insists they were meant to designate him; this is denied, and the entire papers in this cause, as well as complainant's silence. The adverse right and situation of the land is at war with his claim; and the adding of ark to the name, as it is alleged, makes no case of spoliation against him; it is explained by the papers in the cause, and brought home to the complainant as a mere correction of a mistake by the very title papers under which he sold his nine entries of land, of 15th April, 1842, for he informs the court in his present bill, that half or all of these grants were lifted from the office by his brother Caswell Lea, complainant having entered them for his benefit, when, in 1846, if not before, the conveyance was made, he must have seen the erasures on four of his grants in his favor. The hon'l court will not fail to perceive complainant's shifting grounds, not only in the matters before adverted to in this answer, but in the important fact that in the original bill he accounts for the non-possession of his grants from the assertion that Luke Lea was his kinsman, and having paid him all fees for perfecting his titles he paid no further attention to the matter; yet in his present bill he tells us that he frequently applied to the register for his grants, and was informed that they were not perfected.

Respondents having disposed of the entries on the 15th and 5th of April, and the charges of alteration, &c., further answering, say, that they are informed and believe it to be true, that complainant, as he states, made no entries in the entry taker's office at Cleveland after the 15th of April, 1842; and respondents are also informed, and believe the fact so to be, that he made no entries either before the 5th or 15th of April, 1842, and that the only entries he did

make were on the day last mentioned, and these he tells us were all for his brother in his present bill, and respondents believe the fact to be that he did make all the entries made by him in the Ocoee District for grazing purposes for Caswell Lea, and has transferred all said lands to him.

Respondents further answering state it is true, that William Park, after the 15th of April, 1842, made various entries, in some of which his name was written in full; this, as respondents believe, was owing to no design of any kind. But in this connection respondents will state, as they are informed and believe, that all locations filed and now in the office under date of May, 1853, and subsequent thereto, were merely made out and filed to supply the place of entries previously used, long before made by him, as there shown by the books in the office, the old locations having been lost or mislaid, which complainant must have known when he made out his tabular statements Nos. 1 & 2, for it was spoken of in the office when said locations were examined by complainant's agent, Albert Miller Lea, and must have been known to him.

If there was any design in making the locations of May, 1853, and any subsequent ones in the manner charged, respondents did not participate in it, nor do they for one moment suppose it was with a view to aid them, as the history and evidence of this cause clearly show.

Respondents have not compared complainant's tabular statements exhibited with his said bill with the papers in the office, and neither admits nor denies its correctness, but when it agrees with Exhibits Nos. 3 & 4, it is correct, but when it disagrees they believe it to be incorrect, when it has relation to the same things. Respondents' exhibits were made to cover all the entries made on the 5th or 15th of April, 1842, either by William Park Lea or complainant, as the only ground in controversy arose out of entries made on one or the other of these days. And respondents do not in law recognize the right of complainant to call on them to admit or deny statements of entries no way involved in this controversy, and made, as respondents' believe, for vexation and delay. If complainant deems them material, he leaves him to verify them as best he may.

These respondents further answering admit it to be true that said Park Lea had access to the books and papers of the Register's office, and was to some extent acquainted with the books and papers of both offices, but they deny, from information and belief of undoubted character, and supported by stubborn facts, that he fraudulently obtained the grant in question for entry No. 5446, the land in dispute, and withheld it fraudulently until he sold said land to John Davis.

Respondents say that said Lea did sell said land to Davis, and in entire good faith, as they have every reason to believe; they further say that at such sale he was the true owner of said land, and that complainant never at any time had any claim or title to the

same, and that his present claim is a mere pretence, for all which they have good reasons for belief, and so state.

Respondents admit that it is true that William Park Lea's interest required that all mistakes that might exist in the title papers for land which he had entered should be corrected, and they believe that the corrections in the grant and grant book, in relation to the land in dispute by the words "ark" after the capital letter P, was made in good faith, and to make them speak the truth, and also that complainant himself knew of it, and was benefited by mutual corrections, as is hereinbefore shown. Respondents believe for the reasons stated in their answer to the original bill, as well as those disclosed in their present answer, that the correction alluded to was procured to be made not only by Park Lea alone, but also by complainant, and that said correction was made in the manner in their original answer stated, and by competent authority, and they deny said correction was procured in the manner and for the purpose charged by complainant in his present bill.

These respondents know nothing, nor have they any information, that warrants them in believing that William Park Lea either made or caused to be made, entry No. 8737, or the recording in the grant book what purports to be a grant found on said alleged entry, or the assignment of said certificate of entry for said land by Francis W. Lea to the said William Park Lea. But these respondents do believe that the whole proceeding relating thereto was a mistake, and is unsupported, and by no possibility could have been of any avail to either the said Francis W. Lea or William Park.

These respondents are informed and believe that this alleged entry and grant, as shown in the grant book, was not known until this suit was commenced; and certainly if William Park Lea had procured it to be done in the proceedings instituted in the Chancery Court at Cleveland to which allusion is made, the same would have been in some way noticed, his title then had to be set forth, and if he had had an agency in this matter and knew of the alleged copy of the grant on the grant book, he would not have been silent. Respondents cannot tell the secret thoughts and unavowed intentions of said William Park Lea, which complainant asserts without equivocation or innovation in the most positive language, but they have every reason to believe from his muniments of title, his conduct and declarations, that he believed himself to be, and in fact was the only true owner of the land in dispute; they, therefore, deny the charge that said William Park Lea knew he had no valid title to the land, and that it rightfully belonged to complainant.

Respondents further answering admit it to be true that said William Park Lea, by his regularly appointed agent, did, about the time and in the Courts stated by complainant, institute the suits named against the parties, and for the purposes stated, and alleged the deed from himself to John Davis was a forged deed; and respondents admit that it is true that said bill was sworn to by John Hambright.

Respondent Calloway knows the fact to be true that, before the institution of said suit, William Park Lea was in Tennessee on a visit, and did then assert his right to said disputed land, and denied the validity and genuineness of the deed to said John Davis. And respondent Calloway knows that said William Park Lea pronounced said deed a forgery, and all this was said and declared before the institution of said suits. And your other respondents believe the statements of said Calloway as to the above actings, and doings, and sayings of the said Park. And all of these respondents admit that after the filing of said bill of his they had notice of said Park's declarations. And they admit that said Hambright swore to said bill after said declaration of William Park Lea.

Respondents further answering state, that William Park Lea did make a power of attorney to John Hambright about the date stated, and with the powers stated, and it may be that such original is on file in the Chancery Clerk's office as stated; and also they are willing to admit that said power of attorney was executed after his aforesaid visit to Tennessee.

Respondents further answering, having not got to that point of the bill which adverts to J. C. Tipton's testimony, and attempts to overturn it, supposes that they had better answer it also, aver that said Tipton is a gentleman of high character, intelligence, and unsuspected honor and integrity; they believe he did make the corrections complained of under the circumstances stated by him, and they are advised he had competent authority so to do; but this is a question of law submitted to the Ho'l Court. But respondents are advised that even if said Tipton had not competent authority to make said corrections, the determination of that question does not decide that complainant is entitled to the original grant, for, as they are advised, even if the grant was reformed by the decree of this Hon'l Court so as to stand in the name of William P. Lea, the important question would yet remain whether was meant by that name William Park Lea or complainant; and before complainant could have any decree for the delivery of said grant to him he must establish that by William P. Lea was meant himself, which these respondents are advised it would be hard for him to do on declaring otherwise to said register, and having the grant added to *to* avoid any doubt; and more particularly so when such his solemn act is fortified by the other bold, striking and conclusive facts confirming the propriety and truthfulness of such his act; but respondents are advised that these are all questions for the decision of this Hon'l Court, to which they are submitted.

Respondents further answering say, the original grant is now on file in this Court. Respondent Waterhouse says that said original grant is in his handwriting, with the exceptions of the alterations and corrections complained of; that he has seen and inspected said grant, and has no doubt he filled it up, with the exceptions before stated; these corrections he believes to be in the handwriting of

Jonathan C. Tipton, who was register at the date of the grants, and respondent was his deputy. Respondent has no personal knowledge of how or under what circumstances the correction or addition to the said original grant were made.

The insinuation, not direct charge, that he, respondent, was privy to it is entered. And respondent believes the unauthorized innuendo and motives assigned to him for the alleged act indicate a state of affairs on the part of complainant that can only redound to his own disadvantage, he will, therefore, pass the matter by in silence, leaving to complainant to judge what his surprise was on reading so groundless a charge. Respondent asks permission to say to the Hon'l Court that while he acted as deputy register he resided some distance from Cleveland, and was not as much in the office as his principal, Tipton being considered a more ready or speedier penman. Col. Tipton, nearly in all cases, read the certificate of entry, and respondent filled up the grants according to the calls of certificate; when the grant was filled up it was sent Nashville for completion by the signature of the governor, &c.; the grants, after being filled up, frequently remained in the office some time before being sent to Nashville, awaiting convenient private conveyance to avoid postage. On being returned in for the greater portion of the coin, if not mostly all, they were recorded by Col. Tipton.

The other respondents state that they believe the foregoing statements of their co-respondent Waterhouse to be true in all particulars.

These respondents have not been able to discover any attempt in the words "ark" complained of in the original grant at two different styles of writing.

The Hon'l Court will have the original grant at the hearing, and will have ocular demonstrations, as they believe, of the great mistake complainant's ingenuity has led him into by charging an imitation of handwriting.

It is true that respondents did admit, in their original answer, that there was a certificate of entry for the land in dispute found in the office, and that it was in the name of William P. Lea; but they then stated, as they do now, that they are informed and believe said certificate was neither in the handwriting of Luke Lea, or either of his sons who assisted him in the discharge of his duty, and from some strange cause, as they are informed and believe, that said certificate has disappeared most strangely.

Respondents have had no agency in its abstraction or loss, nor do they know where it is, and must and do hold complainant to proof of its authenticity, for they have reason to believe that it requires verification.

Respondents further answering say, that it is true that Tipton in his deposition did state that he believed the figures "47" and the words "*and the north half of the northeast*," were interpolated in the record of grant No. 5744, on entry No. 5446, and that said words were in the handwriting of Francis W. Lea; respondents are

informed and believe that said opinion of the witness Tipton is correct; if true, as they believe that the northwest quarter alluded to is, some three miles from the land in dispute, and appears to be entered and granted as stated.

Respondent, Calloway, has no grants in his possession in the name of William P. Lea, or William Park Lea; on the 13th of December, 1854, he had some grants of Hambright, of Wm. Park Lea, which he entered soon after said Calloway. States also that grant No. 6251 upon entry No. 6115 is not in his possession, nor does any thereof of it; said Calloway also states that it was not in his possession on the 13th day of December, 1854, and said Calloway is advised, that if he ever had such grants, complainant has made no case entitling him to call for them.

Respondents further answering, state that grant No. 6251 upon entry 6115, as they are informed and believe, embraces land adjoining or near to the land in dispute.

Respondents are informed and believe that complainant did not make an entry of said land; they have already answered as to the location and certificate of entry, and also refer to these exhibit in relation to said land. Respondents state, as shown on the map of the District, that said land is contiguous to the land in dispute, and both lie on a stream of water as originally shown by the map, but by no means has complainant, as they are advised, any right to include it in his amended and supplemental bill for relief.

Respondents do not believe, for very satisfactory reasons, that complainant either entered the land he is inquiring after for a range or any other purpose, or even entered it at all, but believes that he is trying to extract some information that would give him some pretence to set up a claim, or to harass and delay them. Respondent Calloway, who has inspected the map, says that this and one other entry were the only entries, as he believes, made by William Park Lea east of the basin line, on the 5th of April, 1842. And that all the other entries made by said Lea on that day, were made west of the basis line, but that he subsequently made entries east of the basis line. And the other respondents believe the above statements and answer of their co-respondent Calloway to be correct. And your respondents, Calloway and Waterhouse, in answer to the special charge, that they at the time of their purchase or becoming interested in the property in dispute, and before, had actual notice of complainant's being owner of the land in dispute, severally deny said charge. And they also deny that they had such notice as should have put them on inquiry, neither before nor at the time referred to. And they also aver that they then neither knew or had been informed that complainant was putting up, or had claim to said land or any part of it. But these respondents do all admit, as they before stated in answer to the original bill, that after they had agreed definitely on the purchase, and before any of the money was paid on conveyance made, Francis W. Lea did set up claim to the land, and asserted that

he had an older and better title, and they were cautioned by him, said Francis W. Lea, as to his, said Francis' alleged title, and threatened by him with a suit on his title, they then neither knew nor heard, *nor heard*, nor were cautioned as the complainant's alleged *alleged* title.

And these respondents further answering, on information and belief, and the facts in the cause, do most positively deny that the possession of John Davis, as set up and plead in their answer in the original bill, was a fraudulent possession.

They also deny that said possession was under a fraudulent grant; they also deny it was under a fraudulent deed. They deny that the grant in question, as they verily believe, was the grant of complainant, was intended for him, or covered his land, and they deny that ever was in his possession; and from information and belief, and the numerous facts before shown, and others, they deny that the possession of said grant by William Park Lea or John Davis was fraudulently concealed by them, or either of them, from complainant.

Your respondents further answering says that, *that* they have filed with their answer a true and perfect copy of the deed from William Park Lea to John Davis, referred to and set up in their original answer; they believe the said copy to be correct in all respects; it is marked Exhibit five, and prayed to be taken as a part of their answer; and they offer to produce the original for inspection, as this Hon'l Court may direct. They all aver that they believe said deed to be the genuine deed of William Park Lea; that the same signed, sealed and delivered by him, at the time it bears date, to the said John Davis, and that said Davis went into possession, and held under the same, in the manner they have stated in their answer to the original bill, and they have put up and rely on the statute of limitation, as set up in their said answer to the original bill. The subscribing witnesses to said deed are Elias Davis, and Young Davis, brother; and sons of the vendee, John Davis. Respondents have no reason to believe that said witnesses did not attest said deed, at the time of its execution by William Park Lea, and delivery to John Davis, and if it be material to prove that said witnesses did not then attest it, respondents hold complainant to strict proof; but respondents do aver from information and belief, and all the facts attendant on said John Davis holding of said land, that he held as owner, under and by virtue of said deed, the land in dispute from the date of said deed, to wit, the 18th day of June, 1846, in the manner they have stated in their answer to the original bill, and then sold and conveyed in the manner they have therein stated, and that his vendees have been in possession in the manner therein stated, and that respondents came into possession in the way and under the title therein stated, and that such holding was adverse to the right and title alleged by complainant, and gives them the benefit of the statute of limitations of seven years therein relied on, and also here.

And respondent Calloway, in answer to the special interrogations

propounded on the genuineness of said deed and his alleged agency, says it is true that before the institution of said suits of William Park Lea, the said William Park came to him, told him said deed was a forgery, that he had never made or signed it, and offered respondent one-half of the amount of the property recovered, to join with, and aid him in the bringing of all suits necessary to test the title, and recover the property. Respondent at that time had not seen the deed to said John Davis, and then believed the declaration of said Park, but he refused said Park's proposition, and declined to have anything to do with said William Park Lea; held no consultations with him in writing or otherwise, if this was not a consultation, which he did not so consider, about instituting said suits, or about their management, employing attorneys, or about witnesses, or about staying waste, pending the suit at law, or did said William Park Lea hold any conference with him; he may, and doubtless did hear said Park speak of said suits, and he knows said Park told him he had brought them, for, as he recollects, he was said Park's security for the injunction that issued. This respondent held no conferences with said Park's agent, John Hambright, in relation to said suits, for the benefit of William Park Lea, that he has any recollection of, nor did he in any manner meddle or mix himself up with the matter. This respondent further answering says, he was in no ways to be benefited by said suits, and this respondent further answering, states that he did not act as agent for, or on behalf of said William Park Lea, in said suits. And your other respondents believe all the foregoing allegations of said Calloway to be true, and therefore are willing to admit them.

And respondents, Thomas H. Calloway and Samuel Congdon, say that at the time, or about it, of the execution of the title papers of Caldwell, Keith & Mastin, as they now remember and believe, the vendors did take a bond, or an instrument without seal, they do not now remember which, which said writing was signed by them (respondents). They have no recollection of seeing the writing since, nor is it in their possession or control; it was given to either said vendors or their attorney, who they believe was James B. Cooke. Respondents believe the contents of it were, substantially, that respondents, or those in interest with them, should quiet the claim of William Park Lea to the land in dispute, and also quiet the claim of Elias Davis and James Davis as to a claim advanced by them as to other property included in said purchase, known as the United States property. These respondents state they have complied with said stipulations, as are set forth in their answer to the original bill in this cause. The other respondents say they have heard that such a bond or agreement as above stated was given; and they believe, and therefore admit, the above statements of their co-respondents, Calloway and Congdon, to be correct in relation to said bond and its contents. Respondents Calloway and Congdon say that said bond or agreement was not entered into to guard or protect against the claim

of complainant; that they then neither knew or had heard of it. And the other respondents state that they believe the above statements, and that they, your respondents Gilbert and Waterhouse, then neither knew or had heard of complainant's claim.

And all these respondents, further averring, say they have been informed and believe, that at the time of the purchase of Caldwell, Keith & Mastin from said John Davis, his title papers, some or all, have not been registered (the purchase included several tracts); but they do not believe the deed complained of, from John Davis, was in an imperfect state on its face, either at the time of its execution and delivery by Park Lea, which, as they have before stated, on the 18th June, 1846, or at any time afterwards; but an inspection of the papers will best decide this question, and they are advised, is a question of law for this Hon. Court. These respondents are informed and believe, that said Keith, Caldwell & Mastin did inspect the title papers to the property purchased by them of said Davis, and found the title perfect to the land in dispute, but that the deed had not been registered. They paid John Davis the consideration money for the land in dispute and other lands purchased from him, and took the bond of Elias Davis, conditional that he would attend to and have said deed registered.

Respondents have never seen said bond, and no parties to it. Respondents have never seen said bond or agreement; they do not know where it is; it is not in their possession or under their control.

These respondents have no recollection of hearing what the penalty of said bond was, or its conditions, other than they have stated; have not seen it, nor do they know where it is. All this information came to respondents since the purchase from Caldwell, Keith & Mastin. Respondents have no paper in their possession executed by Elias Davis, in relation to said purchase of Keith, Caldwell & Mastin from John Davis, nor do they recollect of any except those stated.

Respondent Calloway, answering as to the possession of the original deed from Park Lea to John Davis, states it is in his possession, and he must be permitted to express utter surprise at the continued clamor about forgery in the deed of William Park Lea. Complainant's agent, Albert Miller Lea, has seen said original deed, before the filing of this bill; it was shown to him by respondent, and he verily believes that said agent well knows and believes it to be in the handwriting of William Park Lea, and respondent has no doubt could so be proved by one hundred men. And this respondent will here state, which he should have done in a previous part of this answer, that after the institution of said suits of William Park Lea, sometime, he got to see the original deed, and on sight of it, being well acquainted with the handwriting of said Lea for years, he was well satisfied that said Park had executed said deed, and that it was in his handwriting. Respondent was taken at great surprise by this discovery, was concerned for the condition in which said Park was placed, seen him at as early a day as possible, showed him the deed,

said Park acknowledged it was his handwriting, but asserted he had no recollection of having executed it.

Respondent, as before stated, under a different belief, had become security on the injunction bond, and felt an interest on that score. He seen Hambright, and informed him how matters were. Hambright, as agent, had sworn to the bill, and was on the injunction bond. He was also surprised, but seen it was said Park Lea's deed. All this transpired before respondent became one of the purchasers of the property in dispute. In opinion of respondent, the mind cannot doubt as to the said deed being the genuine deed of said Park. The other respondents have no personal knowledge of the above conversations and admissions, but believe the same.

As to where said deed has been to this time since its execution; what said Elias Davis did with it when he is said to have taken it out of the office, and its possession down to the present time.

Respondents received the deed from Hon. John C. Gant a few days after their purchase, and they are informed and believe that he received it from Elias Davis, and they suppose that said Davis received it from John Davis, and respondents have had it down to this time in their possession, since receiving it from Gant, and this is all they know, believe, or suppose about its possession.

And respondent Calloway, in answer to the entry takership, states it is untrue that he was elected Entry Taker as successor to Luke Lea, but Francis W. Lea was, and this respondent, without his knowledge or wish, was elected as successor to said Francis; he refused to accept the office, or act as Entry Taker, nor had he, or did he take possession of the books and papers of the office; but he will here state that he was greatly interested in having the books and papers of said office securely kept, for his titles to large bodies of land were connected with the muniments of said office, and to preserve them he did procure a high-minded and honorable gentleman to take them in charge as a measure of safety, and procured this gentleman to be appointed Entry Taker, but he refused to qualify. The present incumbent is James S. Bradford. The other respondents, from information and belief, believe the facts as above stated by their co-respondent Calloway to be true.

And these respondents further answering say they herewith file a true copy of the paper evidencing the compromise with William Park Lea, marked exhibit 6, and the deed, or rather of a true copy of it, to the Polk County Copper Company marked exhibit 7; also exhibit 8, a copy of the deed from John Davis to Keith, Caldwell and Mastin, marked exhibit 8; also a copy of the contract of John Caldwell with Polk County Copper Company, marked exhibit 9 and exhibit 10. Said Caldwell's deed to said company, also exhibits 11 & 12, the title from Mastin's heirs; also contract with A. H. Keith with said Polk County Copper Company marked exhibit 13.

And these respondents further answering, herewith file a copy of the deed from John Davis to Henry Young for the portion of the

land in dispute, purchased by said Young marked exhibit 14; and also a copy of the deed from said Young to Charles Congdon and Lyman W. Gilbert as trustees for "Mary's Mining Company," marked exhibit 15, and also exhibit 16. Power of attorney to John Hambright.

These respondents further answering say they are informed, and believe that the purchase of Henry Young was not a pretended purchase, but a real and bona fide deed, and that he in good faith paid the purchase-money of twenty-five thousand dollars for the part of the land in dispute purchased by him, and took a conveyance in fee for the same from said John Davis, and all without any notice of complainants' alleged equities.

Respondents do not acknowledge the right of complainant to call for any of the papers exhibited, but rather than have a delay in order to take the judgment of the hon'l court, they have produced them, or rather copies of them, and, when ordered by the hon'l court, are ready to produce the originals for inspection, if the hon'l court shall so adjudge, but as to the deed from William Park Lea to John Davis, and the compromise with said Park Lea, and the deed of his, they are willing to produce for inspection, without first having the judgment of the court, and also the alleged bond of Charles Davis for the registration of the title paper of John Davis, but these respondents have had, as they before stated, nothing to do with said bond.

These respondents further answering, admit that the Polk County Copper Company are taking out large quantities of copper ore off of that portion of the land in dispute, which they claim, but the Mary's Mining Company, as Samuel Congdon says, have never organized, and are doing no work on said property, but have found copper after considerable expense, which, testing of the mineral wealth of the property, adds to its value.

The land in dispute is chiefly valuable for its mineral, which constitutes the essence and substance of its value, and without said mineral would be of little value.

The work on the Polk County property is being carried on by the Polk County Copper Company, a corporation, that said corporation has no other property, but the works and improvements on said lands, and they would not be of value sufficient, or much more than to pay for the improvements, opening of, extracting ores, and other attendant and necessary expenses, but as to this they cannot speak positively without examining the books of said corporation accounts, &c., which they are advised is not necessary for them to do.

And respondents ask that an injunction receiver or manager be refused, and that they have full benefit of all the defences set up in the original answer as to statute of limitations, purchased for a valuable consideration, without notice, and also the defences herein set up, and particularly of the occupant right set forth, of which John Davis was the assignee.

And averring that nothing is unanswered that should be answered, they pray that complainant's bill be dismissed and their costs adjudged to them, &c.

Respondents, though they have formally concluded their answer, beg leave to incorporate in it the important fact that, on information and belief, they charge to be true, that some days preceding the 5th day of April, 1842, and on the 5th day of April, 1842, Luke Lea was sick, and was not in the land office, and so complainant could not have paid his money to him for the entry of lands, &c., as he has charged he did, on the said 5th day of April, which fact they deem material to be considered of in order to a due estimation of the proper weight to be given to complainant's allegations.

THOS. H. CALLOWAY,
EUCLID WATERHOUSE,
SAMUEL CONGDON.

GEO. W. ROWLES,
THOS. C. LYON, *Solct's, &c.*

UNITED STATES OF AMERICA.

Personally appeared before me, John C. Gant, one of the Judges for the Circuit Court for the State of Tennessee, Thomas H. Calloway, Euclid Waterhouse, and Samuel Congdon, and, being duly sworn by me, say that the matters and things of their foregoing answer when stated as of their own knowledge are true, and when stated on information they believe it to be so.

THOMAS H. CALLOWAY,
EUCLID WATERHOUSE.
SAMUEL CONGDON.

Sworn to and subscribed before me, this 6th day of February, 1855.

JOHN C. GANT,
Judge of the 3d Judicial Circuit in the State of Tennessee.

EXHIBIT No. 1.—*Tabular Statement of Cases in which no Alterations*

Nos. of locations and entries in entry-books.	Dates of locations and entries.	Name in original locations, so far as the locations have been found in the office.	Name in mem. or index-book marked "Francis W Lea, B."	Name in memorandum or index-book marked "Day-Book C."	Name in entry-books where entries are recorded at length.
6288	5 April, 1842.	William Park Lea.	William P. Lea.	William P. Lea.	William Park Lea, B.
6334	do.	Not found.	do.	Wm. P. Lea.	do.
6340	do.	William Park Lea.	do.	do.	do.
6341	do.	do.	do.	do.	do.
6344	do.	do.	do.	do.	do.
6354	do.	do.	do.	do.	do.
6357	do.	do.	do.	do.	do.
6368	do.	do.	do.	do.	do.
6376	do.	William P. Lea.	do.	do.	Francis W. Lea, B.
6400	do.	William Park Lea.	do.	do.	William Park Lea, B.
6401	do.	Not found.	do.	do.	do.
6982	15th Ap'l, '42.	W. P. Lea.	do.	This book only extends to No. 6752.	do.
6985	do.	do.	William Park Lea.	do.	do.
6986	do.	William P. Lea.	do.	do.	do.
6987	do.	W. P. Lea.	do.	do.	do.
6988	do.	do.	do.	do.	do.
6989	do.	do.	do.	do.	do.
6990	do.	do.	do.	do.	do.
7145	do.	do.	...	do.	do.
7147	do.	William P. Lea.	...	...	do. C.
7382	19 Ap'l, 1842.	William Park Lea.	...	...	do. C.
8857	18 June, 1846.	William P. Lea.	...	...	Blank in book D.
9000	5 May, 1853.	William Park Lea.	...	...	William P. Lea, D.
9001	do.	William P. Lea.	...	...	William Park Lea, D.
9002	do.	William Park Lea.	...	...	do.
9003	do.	William P. Lea.	...	...	do.
9004	do.	William Park Lea.	...	...	do.
9005	do.	do.	...	...	do.
9006	do.	do.	...	...	do.
9007	do.	William P. Lea.	...	...	do.
9008	do.	William Park Lea.	...	...	do.
9009	do.	do.	...	...	do.
9010	do.	do.	...	...	do.
9011	do.	William P. Lea.	...	...	do.
9012	do.	William Park Lea.	...	...	do.
9016	12 May, '53.	do.	...	...	do.
9017	do.	do.	...	...	do.
9018	do.	do.	...	...	do.
9019	do.	do.	...	...	do.
9020	do.	do.	...	...	do.
9021	do.	do.	...	...	do.
9022	do.	do.	...	...	do.
9023	do.	do.	...	...	do.
9024	do.	do.	...	...	do.
9025	do.	do.	...	...	do.
9026	do.	do.	...	...	do.
8997	5 May, '53.	do.	...	...	William P. Lea, D.
8848	13 June, 46.	...	...	...	D.
8849					
8890	16 Sept., '46.	...	...	...	D.
8861	10 Sept., '46.	...	...	...	D.

appear upon the Books or Papers in the Entry Taker's Office.

Name in certified copies or certificates of entries, so far as the same have been found in the office.	Nos. of grants as recorded.	Dates of grants as recorded.	Name of grantee, as shown in the grant-books, or books containing records of grants.	Remarks.
William Park Lea.	6257	...	William Park Lea.	
6334, 6340, jointly to William Park Lea.	6261	8 Dec., 1842.	do.	One grant on both entries.
6341, 6344, jointly to William Park Lea.	6263	do.	do.	Entries consolidated in grant.
William Park Lea.	6254	do.	do.	
do.	6253	do.	do.	
do.	6256	do.	do.	
6376 and 6400 jointly to William Park Lea.	6262	do.	do.	Entry 6375 covers same land. Entries consolidated.
William Park Lea.	6252	do.	do.	
Not found.				
do.	6264	8 Dec., 1842.	William Park Lea.	Entries consolidated.
do.	6259	do.	do.	
William Park Lea.	6265			
do.	On these			
do.	four			
do.	entries.	8 Dec., '42.	William Park Lea.	Entries consolidated.
Not found.	5701	21 Aug., '42.	do.	
...	5766	...	do.	Location marked "conflict."
Not found.	5765	...	do.	
William Park Lea.				
Not found.				
do.				
do.				
do.				
do.				
William Park Lea.				
do.				
Not found.				
do.				
do.				
do.				
do.				
do.				
William Park Lea.				
do.				
do.				
William P. Lea, assigned.				
William Park Lea, assigned to Patrick Graham.				
William P. Lea, assigned to J. Lingerfelt.				

Exhibit 1. *To Thomas H. Calloway and others' Answer to Supplemental and Amended Bill of William P. Lea.*

WILLIAM P. LEA to CASWELL LEA. } Deed.

"This indenture, made this eleventh day of February, one thousand eight hundred and forty-six, between William Pinckney Lea, of the one part, and Caswell Lea, of the other part, witnesseth: that for and in consideration of one hundred dollars paid and secured by the said Caswell Lea to the said William Pinckney Lea, of the first part, who does hereby bargain, sell, and convey, unto the said Caswell Lea, and his heirs forever, the lands hereinafter described situated on and near the Hiwassee River, also near the gap of the Chilhowee Mountains, near the upper end of the farm on which the said Caswell Lea now lives, in Polk County, Tennessee, in the Ocoee District, being the southwest quarter of the fifth section, first township, third range east of the basis line; and southeast and southwest quarters of section six, first township, third range east of the basis line; and the northeast quarter of section seven, first township, third range, east of the basis line; and the northwest quarter of section eight, first township, third range east of the basis line; and the northeast quarter of the thirty-first section, second fractional township north, third range east of the basis line, and the remainder of the southeast quarter of the twenty-ninth; and the northwest quarter of the thirty-third section, second fractional township north, third range east of the basis line; and the southwest corner of the southwest quarter of the twenty-eighth section, second fractional township north, third range east of the basis line; and the southeast quarter of section thirty-one, range three east, fractional township two; with all and singular the hereditaments and appurtenances thereto belonging, to have and to hold the same to the said Caswell Lea, and his heirs forever, against the lawful title, claim, and demand of all persons whomsoever, the undersigned of the first part will warrant and defend. In testimony whereof he has hereto subscribed his name and affixed his seal the date first above written.

WM. P. LEA. [SEAL.]"

Witness: JOHN N. TAYLOR,
JAMES HAWKINS.

"STATE OF TENNESSEE,
Bradley County.

Personally appeared before me, John H. Robertson, Clerk of the County Court for the County of Bradley aforesaid, William P. Lea, the bargainer named in the foregoing deed, a man with whom I am

personally acquainted, who acknowledged the execution of the same on the day it bears date for the purposes therein expressed.

Witness my hand at office, November the 14th, 1848.

JOHN H. ROBERTSON, *Cl'k.*"

"STATE OF TENNESSEE,
Polk County.

November 15th, 1848. 2 o'clock P. M.

Then were the foregoing deed and Clerk's certificate registered in my office in Benton, in Book B, pages 421—423.

ROBT. N. FLEMING, *Register.*"

"STATE OF TENNESSEE,
Polk County.

I, Robert N. Fleming, Register for the County and State aforesaid, hereby certify that the foregoing is a true and correct copy of the deed named therein, and of the Clerk's and Register's certificates thereto, remaining of record in my office.

Given under my hand at office in Benton, Feb'y 1st, 1855.

ROBT. N. FLEMING, *Register.*"

EXHIBIT 2.—*To Thomas H. Calloway, and Answer to*

	Name.	Date.		
6995	Entry—William P. Lea	April 15, 1842.	South W. qr. Sec. 5	To 1 Range 3 East
6996	" do	do	South E. do 6	do
6992	" Wm. P. Lea	do	South W. do 6	do
6994	William P. Lee	do	North East 7	do
6993	do	do	North West 8	do
6991	do	do	North East 31	Fr. To 2 Mo. do
6997	do	do	Bal. So. E. qr. 29	do
6984	do	do	North West 33 So. W. qr.	do
6983	do	do	So. W. Cor. 28 So. E. qr. Sec. 31	do do

All are marked on the Map in the name of *W. P. Lea.*

EXHIBIT NO. 2.—*To Thomas H. Calloway and others. Answer to the*

No. of location & entry.	Date of location & entry.	Name in original location so far as found.	Name in memo: or index-book marked Francis W. Lea, B.	Name the memo: or index-book marked C.	Name in entry-book where entries are marked in full.
6982 }	15th Ap'l, '42	W. P. Lea	William P. Lea	Nos. in C stop at 6752	William Park Lea
6985 }	do	do	William Park Lea	do	do
6984 }	do	William P. Lea	do	do	do
6897 }	do	do	William P. Lea	do	do
6986	do	do	William Park Lea	do	do
6987 }	do	W. P. Lea	do	do	do
6988 }	do	do	do	do	do
6989 }	do	do	do	do	do
6970 }	do	do	do	do	do
6996	do	William P. Lea	William P. Lea	do	do
6991	do	do	do	do	William P. Lea, ark erased
6992	do	Wm. P. Lea	do	do	do
6993	do	William P. Lea	do	do	do
6994		do	do	do	do
6995	do	do	do	do	do
6983	do	do	William Park Lea	do	William Park Lea
7145	do	W. P. Lea	do	do	do
7147	do	William P. Lea	No name	do	do

Supplemental and Amended Bill of William P. Lea.

Grant 6217 dated	7 December, 1842.	Location in handwriting of P. J. G. Lea, ark marked out.
do 6258 do	8 do	do W. Pinckney Lea.
do 6218 do	7 do	do P. J. G. Lea, ark erased.
do 6216 do	7 do	do P. J. G. Lea.
do 6215 do	7 do	do P. J. G. Lea.
do 6219 do	7 do	do do.
do 6260 do	8 do	do Pinckney Lea { The ark erased
do 6260 do	8 do	do Pinckney Lea { from the grant 6260.
do 5764 do	21 August do	do do Lea, "ark" erased.

Pinckney Lea not owner, but entered by F. W. Lea.

Supplemental and Amended Bill of Complainant of Wm. P. Lee.

Name in certified copies so far as found.	No. of grants.	Date of grant.	Name of grantee.	Remarks.
Not found	(6264)	8th Dec. '42	William Park Lea	
do	do	do		
William Park Lea	(6260)	do	William P. Lea	ark erased in
do	do	do	do	grant
	6259	do	William P. Lea	Locations in the
William Park Lea	(6265)	do	{ do }	handwriting of
do	(do)	do	{ do }	William Park
do	(do)	do	{ do }	Lee
do	(do)	do	{ do }	
do	6258	do	William P. Lea	ark erased
Not found	6219	7th Dec. '42	do	
do	6218	do	William P. Lee	ark erased
William P. Lea, ark erased	6215	do	do	
Not found	6216	do	do	
do	6217	do	do	
do	5764	21st Aug. '42	William P. Lea	ark erased
do	5701	do	William Park Lea	
do	5766	do	do	

EXHIBIT 2.—*To Thomas H. Calloway, and Answer to*

	Name.	Date.			
6995	Entry—William P. Lea	April 15, 1842.	South W. qr. Sec.	5	To 1 Range 3 East
6996	" do	do	South E. do	6	do
6992	" Wm. P. Lea	do	South W. do	6	do
6994	William P. Lee	do	North East	7	do
6993	do	do	North West	8	do
6991	do	do	North East	31	Fr. To 2 Mo. do
6997	do	do	Bal. So. E. qr.	29	do
6984	do	do	North West So. W. qr.	33	do
6983	do	do	So. W. Cor.	28	do
			So. E. qr. Sec.	31	do

All are marked on the Map in the name of *W. P. Lea.*

EXHIBIT NO. 2.—*To Thomas H. Calloway and others. Answer to the*

No. of location & entry.	Date of location & entry.	Name in original location so far as found.	Name in memo: or index-book marked Francis W. Lea, B.	Name the memo: or index-book marked C.	Name in entry-book where entries are marked in full.
6982 }	15th Ap'l, '42	W. P. Lea	William P. Lea	Nos. in C stop at 6752	William Park Lea
6985 }	do	do	William Park Lea	do	do
6984 }	do	William P. Lea	do	do	do
6897 }	do	do	William P. Lea	do	do
6986	do	do	William Park Lea	do	do
6987 }	do	W. P. Lea	do	do	do
6988 }	do	do	do	do	do
6989 }	do	do	do	do	do
6970 }	do	do	do	do	do
6996	do	William P. Lea	William P. Lea	do	do
6991	do	do	do	do	William P. Lea, ark erased
6992	do	Wm. P. Lea	do	do	do
6993	do	William P. Lea	do	do	do
6994		do	do	do	do
6995	do	do	do	do	do
6983	do	do	William Park Lea	do	William Park Lea
7145	do	W. P. Lea	do	do	do
7147	do	William P. Lea	No name	do	do

Supplemental and Amended Bill of William P. Lea.

Grant 6217 dated	7 December, 1842.	Location in handwriting of P. J. G. Lea, ark marked out.
do 6258 do	8 do	do W. Pinckney Lea.
do 6218 do	7 do	do P. J. G. Lea, ark erased.
do 6216 do	7 do	do P. J. G. Lea.
do 6215 do	7 do	do P. J. G. Lea.
do 6219 do	7 do	do do.
do 6260 do	8 do	do Pinckney Lea { The ark erased
do 6260 do	8 do	do Pinckney Lea { from the grant 6260.
do 5764 do	21 August do	do do Lea, "ark" erased.

Pinckney Lea not owner, but entered by F. W. Lea.

Supplemental and Amended Bill of Complainant of Wm. P. Lee.

Name in certified copies so far as found.	No. of grants.	Date of grant.	Name of grantee.	Remarks.
Not found	(6264)	8th Dec. '42	William Park Lea	
do	do	do		
William Park Lea	(6260)	do	William P. Lea	ark erased in
do	do	do	do	grant
	6259	do	William P. Lea	Locations in the
William Park Lea	(6265)	do	{ do }	handwriting of
do	(do)	do	{ do }	William Park
do	(do)	do	{ do }	Lee
do	(do)	do	{ do }	
do	6258	do	William P. Lea	ark erased
Not found	6219	7th Dec. '42	do	
do	6218	do	William P. Lee	ark erased
William P. Lea, ark erased	6215	do	do	
Not found	6216	do	do	
do	6217	do	do	
do	5764	21st Aug. '42	William P. Lea	ark erased
do	5701	do	William Park Lea	
do	5766	do	do	

EXHIBIT No. 4.—*To Calloway*

No. of location & entry.	Date of location & entries.	Name in original location so far as found.	Name in memo: or index-book marked "Fran. W. Lea," B.	Name in memo: or index-book marked day-book C.	Name in entry-book where entries are recorded in full.
5446	Apr. 5, '42	William P. Lea	William Park Lea	William Park Lea	William P. Lea
6115	do	Not found	William P. Lea	William P. Lea	Jno. B. & T. W. Mastin
6288	do	William Park Lea	do	do	William Park Lea
6334	do	Will. Park Lea	do	do	do
6340	do	William Park Lea	do	do	do
6341	do	do	do	do	do
6344	do	do	do	do	do
6354	do	do	do	do	do
6357	do	do	do	do	do
6368	do	do	do	W. P. Lea	do
6376 }	do	William P. Lea	do	do	William P. Lea
6400 }	do	William Park Lea	do	do	do
6401	do	do	do	Wm. P. Lea	William Park Lea
6634	do	do	do	do	do
6625	do	do	do	John Mastin	do
6626	do	Same location, marked 6626		Wm. P. Lea	Chandler, Rogers & M'Camy

and others' Answer.

Name in certified copies of entries so far as found.	No. of grants as recorded.	Date of grant as recorded.	Name of grantee as shown in the grant-books.	
Not found	5744	21 Aug. '42	William Park Lea	"ark" added
William Park Lea, ark added	6251	8 Dec. '42	William Park, ark	Clear "Park"
William Park Lea	6257	do	William Park Lea	
Not found	6261	do	do	Consolidated
William Park Lea	6261	do	do	do
do	6263	do	do	do
do	6263	do	do	do
do	6254	do	do	
do	6253	do	do	
do	6256	do	do	
do	6262	do	do	Consolidated
do	6262	do	do	
do	6252	do	do	
William P. Lea	6250	do	do	ark added
Not found	6250	do	do	The same location is numbered
William Park Lea	6255	do	do	6625 & 6626

Exhibit 5, *to Answer of Thos. H. Calloway and others.*

STATE OF TENNESSEE,
Bradley County.

This indenture, made this the 18th day of June, in the year of our Lord one thousand eight hundred and forty-six, between Willam P. Lea, of the County of Bradley and State of Tennessee, of the one part, and John Davis, of the County of Polk and State of Tennessee, of the other part, witnesseth, that the said William P. Lea, for and in consideration of the sum of fifty dollars to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed, and confirmed, and by these doth grant, bargain, sell, alien, convey, and confirm, unto the said John Davis and his assigns forever, certain tracts or parcels of land, described on the general plan of the Ocoee District as containing one hundred and sixty acres of land, more or less, and also as being the east half of the southwest quarter of section fifteen, in fractional township four south, and range five east, and also the east half of the northwest quarter of section twenty-two, in the same range and township, and all and singular the appurtenances thereto belonging or in any wise appertaining to the said John Davis, his heirs and assigns. I further covenant and bind myself, heirs and representatives, to warrant and forever defend the title to said lands against the lawful claim of all persons whatsoever.

Witness my hand and seal this the 18th day of June, 1846.

WILLIAM P. LEA. [SEAL.]

Witness: ELIAS DAVIS,
YOUNG DAVIS. Sworn to.

STATE OF TENNESSEE,
Bradley County.

Personally appeared before me, John H. Robertson, clerk of the County Court for the County of Bradley aforesaid, Young Davis, one of the within named witnesses, who, after being duly sworn, depose and say he is acquainted with William P. Lea, the bargainor named in the foregoing deed, who, in his presence, acknowledged the execution of the same on the day it bears date, for the purpose therein mentioned.

Witness my hand at office, December 17th, 1852.

JOHN H. ROBERTSON, *Cl'k.*

STATE OF TENNESSEE,
Polk County.

Personally appeared before me, Emmons P. Douglass, Clerk of the County Court for Polk County, Elias Davis, one of the subscribing witnesses to the within deed of conveyance, who, after being

duly sworn by me, depose and says he was acquainted with William P. Lea, the bargainor; that he acknowledged the due execution of the same to be his act and deed, and for the purpose therein contained.

Witness my hand at office *office* in Benton, January 28th, 1853.

E. P. DOUGLASS, *Clerk.*

State of Tennessee, Polk County, January 28th, 1853, 12 o'clock M. Then was the foregoing deed of Conveyance, together with the clerk's certificate, noted in Note-Book A, page 102, registered in my office in Benton in Book D, page 222–223.

Reg. fee $1 00. ROBT. N. FLEMING, *Register.*

Exhibit 6.

Whereas Wm. Park Lea, by his attorney in fact, John Hambright, has this day bargained and sold to the Polk County Mining Company the following described lands, in County, Tennessee, for ten thousand dollars, two thousand dollars due in two months, four thousand dollars due the first day of October, 1854, and four thousand dollars due the first day of December, 1854. Said lands are described as follows, to wit: The east half of the northwest quarter of section twenty-two, and forty acres, the southeast corner of the southwest quarter of section fifteen, all in fractional township four south, and range five east of the basis line, in the Ocoee District, in Polk County, Tennessee. Now, it is alleged that Francis W. Lea sets up some claim to said lands, and if the said Lea brings suit for said lands, on or before the first day of March, 1855, and carries on the suit, and gains said lands, then the said John Hambright is to return and pay to the said Polk County Mining Company the sum of eight thousand dollars and interest from the time it may be paid. If said suit should be brought within said time, but does not gain the land or its value, the said Hambright is bound only to pay such costs and attorney fees as the said company may legally incur in the defence of such suit. Witness my hand and seal this 21st day of April, 1854. JOHN HAMBRIGHT. [SEAL.]

Witness: JOHN C. GANT.

Exhibit 7.

This indenture, made and entered into this 21st day of April, 1854, between William Park Lea, of the County of Jackson, and State of Missouri, by his attorney in fact, John Hambright, of the County of Bradley, and State of Tennessee, of the one part, and the Polk County Mining Company of the other part—

Witnesseth, that for and in consideration of the sum ten thousand dollars in hand paid, the receipt whereof is hereby acknowledged,

I, the said William Park Lea, by my said attorney in fact, have this day bargained and sold, and by these presents do bargain and sell, enfeoff, transfer and convey to the said Polk County Mining

Company and their successors forever the following described tracts or parcels of land in Polk County, to wit: The east half of the northwest quarter of section twenty-two, and forty acres more or less; the southeast corner of the southwest quarter of section fifteen, the last piece of land intended to be described and conveyed is all the balance of the east half of the southwest quarter of said section fifteen, not included in the compromise between Bryson and Parks, William Park Lea and Samuel Congdon, and all of the above described lands lie in fractional township four south, and range five east of the basis line in the Ocoee District. To have and to hold the above described tracts or parcels of land to the said Polk County Mining Company, their heirs, assigns and successors forever, as an indefeasible estate of inheritance in fee simple; and I, the said William Park Lea, for myself, my heirs and assigns, will forever warrant and defend such title as I have to the above described tracts of land, but no further or otherwise it not being intended to warrant the title to said lands. In testimony whereof, I, the said William Park Lea, have hereunto subscribed my name, affixed my seal, this the day and date first above written.

WILLIAM PARK LEA, [SEAL].
By Attorney in fact, JOHN HAMBRIGHT.

Witness,
JOHN C. GANT,
JESSE H. GANT.

STATE OF TENNESSEE,
Bradley County.

Personally appeared before me, John H. Robertson, clerk of the County Court for *for* the County of Bradley aforesaid, John Hambright, attorney in fact, the bargainer named in the foregoing deed, a man with whom I am personally acquainted, who acknowledge the execution of the same on the day it bears date for the purpose therein mentioned.

Witness my hand at office, April 21st, 1854.

JOHN H. ROBERTSON, *Clerk.*

STATE OF TENNESSEE,
Polk County.

April 22d, 1854. 3 o'clock P. M.

Then was the foregoing deed of conveyance together with the clerk's certificate noted in note book A, page 125; registered in my office in Benton in book E, pages 229, 230.

ROBERT N. FLEMING, *Register.*

Exhibit 8.

This indenture, made and entered into this seventh day of December, in the year of our Lord one thousand eight hundred and fifty-

two, by and between John Davis, of the County of Polk and State of Tennessee of the one part, and John Caldwell, of the County of Sevier, Thomas W. Maston and Alex'r H. Keith, of the County of McMinn and State aforesaid of the other part—

Witnesseth, That for and in consideration of the sum of six thousand dollars to me in hand paid the receipt of which is hereby acknowledged, I the said Davies have this bargained and sold, and by these presents sell, convey, and confirm unto the said Caldwell, Mastin, and Keith, the following described pieces or parcels of land, to wit: The southeast fractional quarter of section twenty-two, with the exception of so much of said fractional quarter as lies in the fork of the Ocoee River and Fightingtown Creek on the east side of said creek; also the northeast quarter of the same section; also the east half of the northwest quarter of the same section; also forty acres, it being the southeast corner of the southwest quarter of section fifteen; also the northwest quarter of section twenty-three; also one hundred and twenty acres of the northeast fractional quarter of section twenty-three, it being the west half, and forty acres in the northeast corner of said fractional quarter section; also the northeast fractional quarter of section twenty-seven, containing nine acres more or less; also the east half of the southwest quarter of section twenty-two; the forty acres on the southeast corner of the southwest quarter of section fifteen extends on the north to a conditional marked line between Nelson Carter and John Davis, beginning on a white oak near Mill Creek, running across a ridge to a black oak and post oak on or near Patrick Nashe's line; the above described lands are in range five east of the basis line and fractional township four south, Ocoee District. I do hereby covenant with the said Maston, Caldwell, and Keith, that I am lawfully seized of said lands, have a good right to convey, and that the same are unencumbered. I do further covenant that I will warrant and defend the titles to said lands to the said Mastin, Caldwell, and Keith, their heirs, representatives, and assigns, against the lawful claims of all persons whatever.

Given under my hand and seal the day and date above written.

JOHN DAVIS. [SEAL.]

Signed and delivered in presence of us,
JAMES R. BUCHANNAN,
WILLIAM GRANT.

I, the said John Davis, also covenants for myself, his heirs, administrators, executors, and assigns, to forever defend the right, title, and claim, specified in the foregoing deed.

Witness my hand and seal the day and date written above in said deed. JOHN DAVIS. [SEAL.]

Signed, sealed, and delivered in our presence.
JAMES R. BUCHANNAN,
Attest, WILLIAM GRANT.

STATE OF TENNESSEE,
Polk County.

Personally appeared before me, Emmons P. Douglass, Clerk of the County Court for the County of Polk, John Davis, the within named bargainer with whom I am personally acquainted, and acknowledged the due execution of the within deed of conveyance together with his signatures thereto and for the purposes therein contained.

Witness my hand at office in Benton, December seventh, A. D. 1852. E. P. DOUGLASS, *Clerk.*

STATE OF TENNESSEE,
Polk County.

December 27th, 1852, 6 o'clock P. M.

Then was the foregoing deed of conveyance together with the clerk's certificate noted in Note Book A, page 101, registered in my office in Benton, in Book D, pages 204–206.

ROBT. N. FLEMING, *Register.*

Exhibit 9.

Memorandum of a contract made and entered into this sixth day of April, 1854, by and between John Caldwell, of Polk County, Tennessee, of the first part, and the Polk County Copper Company, of the other part—Witnesseth, that the said Jno. Caldwell, for and in consideration of the sum of fifty thousand dollars, to be paid to him in good and lawful money of the United States of America, by said Polk County Copper Company as follows: that is to say, the sum of twelve thousand five hundred dollars in six months from this date, a like sum in eight months, a like sum in twelve months, and a like sum in ten months from this date, for which several sums to be paid as aforesaid, the Polk County Copper Company have executed to the said Jno. Caldwell, their several bills, single of even date with this instrument. The said John Caldwell does, by these presents, bargain and sell to said Polk Co. Copper Co., an undivided one-third part of the mining property in Ducktown, Polk County, Tennessee, known as the John Davis Mine, embracing about one hundred and sixty acres of land, more or less, as may be required to *to* furnish an ample margin of not more than —— feet on the southeast side of the main vein, passing through said property, and on which the openings have been made; said land, as herein bargained and sold, is to cover the whole length of the veins opened on the John Davis' property located and known. The division line to divide and bound said land so sold from the other land, is to be run and marked by Thos. H. Calloway, S. Congdon, Jno. Caldwell, A. K. Keith, and Jno. J. Mastin; said Caldwell also sells to said Company his undivided interest, being one-third of the mineral interest on sixty acres, and the fee in twenty acres of the Nash property adjoining the Jno. Davis property, and he also agrees to relinquish to Lyman W. Gilbert all his claim, right,

and property in and to the Elias Davis mine and property, in said Polk County, and also to relinquish to Sam'l Congdon all and any claim or interest he may have in the Nelson Carter property in said County.

And the said Jno. Caldwell, for the considerations aforesaid, hereby covenants and binds himself, his executors, administrators and heirs, to make to said Polk Co. Copper Co. or their assigns, on the full payment of the several sums as aforesaid, a deed in fee simple to his said undivided interest in the John Davis property, as aforesaid described, and to his interest in the Nash property as aforesaid; and also to relinquish by deed, to Lyman W. Gilbert, his interest in the Elias Davis property; and also to relinquish by deed, to Sam'l Congdon, his interest in the Nelson Carter property.

And the said Jno. Caldwell, further hereby bargains and sells to the United States Copper Company, the balance of his undivided interest in the remainder of the Jno. Davis lands and mines, being one-third of about one thousand acres of land, more or less, the numbers, boundaries and descriptions of which are set forth in the deeds therefor made by Jno. Davis and Elias Davis to Jno. Caldwell, Thos. W. Mastin, and A. H. Keith, and which deeds are registered in the office of the Registry of Polk Co., Tennessee, and in consideration for which one-third interest in said lands, the said United States Copper Company are to pay the said Jno. Caldwell, his heirs and assigns, the sum of thirty-three thousand three hundred and thirty-three dollars in lawful money, to be paid out of the first proceeds of said lands and property, whether arising from sales of any of said lands or mines, or from the proceeds of mines or mining operation on said lands, provided, if the first proceeds do not amount to the sum of one hundred thousand dollars, then the proceeds are to be divided pro rata, one-third to the said Jno. Caldwell, and so on out of first proceeds until the whole am't is paid, as aforesaid, and also to grant and issue to said John Caldwell, his heirs, *heirs* or assigns, one full sixth part of the capital stock of said United States Copper Company, estimating said capital stock at one million of dollars, and on payment to said Jno. Caldwell, to his heirs or assigns, the said sum of thirty-three thousand three hundred and thirty-three dollars, and the issuance to him, or them, script or certificates for one full sixth part of the capital stock of said Company as aforesaid, he, the said Jno. Caldwell, hereby covenants and binds himself, his heirs, and personal representatives, to execute to said United States Copper Company, or their assigns, a deed in fee simple, for his undivided interest in said lands as aforesaid.

In witness whereof, the said Jno. Caldwell hereto subscribes his name and affixes his seal, the date first above written.

JOHN CALDWELL, [SEAL.]

Signed, sealed, and acknowledged before undersigned,

A. D. KEYES,
J. B. COOK.

STATE OF TENNESSEE,
McMinn County.

Personally appeared before me, Thos. Vaughan, Clerk of the County Court, for the County and State aforesaid, Jno. Caldwell, one of the contracting parties in the foregoing contract, with whom I am personally acquainted, who acknowledged that he signed the same on the day it bears date, and for the purposes therein expressed, certified, and admitted to registration in Polk County; given under my hand at office, in Athens, this 7 day of April, 1854.

T. VAUGHAN, *Clerk.*

STATE OF TENNESSEE,
Polk County.

April 8, 1854, 6 o'clock P. M.

Then was the foregoing memorandum of contract or title bond, together with the clerk's certificate, noted in Note Book A, page 124, registered in my office in Benton, in book E, pages 218, 220.

ROBT. N. FLEMING, *Register.*

STATE OF TENNESSEE,
Polk County.

I, Robt. N. Fleming, Register for the County and State aforesaid, hereby certify that the foregoing is a true and correct copy of the memorandum of contract named therein, and of the clerk's and register's certificates thereto remaining, is record in my office.

Given under my hand at office in Benton, August 12th, 1854.

ROBT. N. FLEMING, *Register.*

Exhibit 10.

This indenture, made the tenth day of June, in the year one thousand eight hundred and fifty-four, between John Caldwell, of Jefferson County, Tennessee, of the first part, and the Polk County Copper Company, incorporated by the Legislature of Tennessee in the year 1854, of the second part, witnesseth, that the said John Caldwell, party of the first part, for and in consideration of the sum of fifty thousand dollars, lawful money of the United States, to him paid duly before the delivery thereof, hath bargained and sold, and by these presents doth grant and convey, to the said Polk County Copper Company, party of the second part, their assigns and successors forever, all the undivided third of a certain tract or parcel of land lying within county of Polk, of the fifth range east, fractional township four south of the basis line of Ocoee District, Tennessee, beginning at stake and stones at the centre of the section line of sixteen, and running thence S. 70° E. eighty rods to a stake on land of Calloway & Mary's mines; thence S. 20° W. rods to a post oak and black-oak; thence along a conditional line made by Nelson Carter and John Davis, intended to be S. 70° E. eighty rods to a white-oak tree, and from said white-oak across mill branch six rods S. 70° E. to a stake; then S. 20° W. forty rods to a stake; thence S. 48° W.

eighty-one rods to a stake near a large yellow-pine tree; thence S. 61° W. one hundred and sixty-two rods to the land of Eph'm Prince; thence N. 70° W. twenty-two rods to the section line; and thence N. 20° E. three hundred and twenty rods to the first-mentioned bounds; together with all and singular tenements, hereditaments, and appurtenances, and all the estate, title, and interest of the said party of the first part therein. And the said party of the first part doth hereby covenant and agree with the said party of the second part that at the time of the delivery hereof the said party of the first part is the lawful owner of the premises above described and granted, and seized thereof in fee simple absolute, and that he will warrant and defend the above granted premises in the quiet and peaceable possession of the said party of the second part, their assigns or successors forever.

In witness whereof, I have hereunto set my hand and seal, day and date as above written.

JOHN CALDWELL. [SEAL.]

Sealed and delivered in presence of us,

J. B. COOKE,
WM. BURNS,
C. A. PROCHEN.

STATE OF TENNESSEE,
McMinn County.

Personally appeared before me, Thomas Vaughn, clerk of the county court for county and State aforesaid, John Caldwell, the maker of the within deed of conveyance, who acknowledged the due execution of the same on the day it bears date, and for the purposes therein expressed.

Given under my hand, at office in Athens, this 10th day of June, 1854.

F. VAUGHN, *Clerk.*
By JOHN M. VAUGHN, *D. C.*

STATE OF TENNESSEE,
Polk County.

June 12th, 1854, 7 o'clock A. M., there was the foregoing deed of conveyance, together with the map attached and the clerk's certificate, noted in Note-Book A, page 130, registered in my office in Benton, in book E, pages 319, 320.

ROBERT N. FLEMING, *Register.*

Exhibit 11 *to Joint Answer of Calloway and others to Supplemental Bill.*

Copy.

Memorandum of contract made and entered into this 6th day of April, 1854, by and between John J. Mastin for himself and Jemima Mastin, widow, and Sarah Ann Mastin, Susan N. Mastin, Reuben F. Mastin, Thomas H. Mastin, David C. Mastin, William

W. Mastin, and Martha J. Mastin, by this guardian, Jemima Mastin, said persons being the widow and heirs at law of Thomas W. Mastin, deceased, of the first part, and the Polk County Copper Company of the second part, witnesseth that for and in consideration of the sum of fifty thousand dollars lawful money of the United States of America, to be paid to the parties of the first part as follows, that is to say, the sum of twelve thousand, five hundred dollars in six months, from this date, a like sum in eight months, a like sum in ten months and a like sum in twelve months from this date, for which several sums to be paid as aforesaid the said Polk County Copper Company have executed their several bills single of even date herewith; they the said parties of the first part, do by themselves and by their guardian as aforesaid, by these presents bargain and sell to said Polk County Copper Company, an undivided one-third part of the mining property in Ducktown, in Polk County, Tennessee, known as the John Davis Mine, embracing about one hundred and sixty acres of land more or less, as may be required, to furnish an ample margin of not more than ——— feet on the southeast side of the main vein passing through said property, and on which the openings have been made; said land as herein bargained and sold is to cover the whole length of the vein opened on said John Davis property, the division line to bound said line to be run and marked by Thomas H. Calloway, Samuel Congdon, John Caldwell, A. H. Keith, and John J. Mastin; said parties of the first part also sell their undivided interest being one-third of the mineral right and mining privileges as they and others hold them in and to the Nash property adjoining the John Davis property being mineral interest in 60 acres, and a fee simple in the remainder, and also they agree to relinquish to Lyman W. Gilbert all and every claim and right they have in and to the property known as the Elias Davis property, acquired by an agreement with Elias Davis, also to relinquish to Samuel Congdon all their interest and claim in and to the Nelson Carter property by virtue of a contract once made with said Nelson Carter. And said parties of the first part for the considerations aforesaid hereby covenant by themselves and by their guardian aforesaid, and bind themselves, their heirs, and executors, and administrators, to make to said Polk County Copper Company, or their assigns, on the full payment of the several sums as aforesaid, a title in fee simple to their undivided interest in the John Davis property as aforesaid described, and to the Nash mineral interest as aforesaid, and to relinquish by and to said Lyman W. Gilbert their interest in the Elias Davis property, and to Samuel Congdon their interest in the Nelson Carter property. And the said parties of the first part as aforesaid do hereby bargain and sell to the United States Copper Company the balance of their undivided interest, being one-third in and to the John Davis lands in Polk County, containing about one thousand acres, more or less, the numbers, boundaries, and descriptions of which will be known by an

inspection of the deeds therefor, executed by John Davis and Elias Davis and Nelson Carter to John Caldwell, Thomas W. Mastin, and Alexander H. Keith, and are registered in the office of the Register of Polk County, Tennessee, in consideration for which one-third of said lands and property the said United States Copper Company are to pay to the said parties of the first part the sum of thirty-three thousand three hundred and thirty-three dollars, in lawful money, to be paid out of the first proceeds of said lands and property, whether arising from the sales of lands, or from the proceeds of mines or mining operation thereon, and also to grant and issue to said parties of the first part, their heirs, or assigns, one full sixth part of the capital stock of said company, estimating said capital at ——— dollars, and on payment of said sum of money as aforesaid to said parties of the first part, or their heirs, or assigns, &c., and the issuance to them or to their assigns, heirs, or representative, scrip or certificates for one full sixth part of the capital stock of said company as aforesaid, then they, the said parties of the first part, hereby covenant and bind themselves, their heirs, and representatives, to execute to said United States Copper Company, or their assigns, a deed in fee simple for said undivided interest in said lands as aforesaid. And in witness and confirmation of this contract title bond, the said Jemima Mastin, widow and relict of Thomas W. Mastin, deceased, for herself, and in her own right, and the said John J. Mastin in his own right, and as heir-at-law of said Thomas W. Mastin, and Sarah Ann Mastin, Susan N. Mastin, Reuben F. Mastin, Thomas H. Mastin, David C. Mastin, William W. Mastin, and Martha J. Mastin, heirs-at-law of Thomas W. Mastin, deceased, by their guardian, Jemima Mastin, hereto subscribe their names and affix their seals the date above.

It is further understood that if the first proceeds arising from *sails* or mining operations by the United States Copper Company do not amount to one hundred thousand dollars, then the proceeds, whatever they may be, are to be divided *pro rata*, the parties of the first part being paid only one-third, and so on until fully paid.

The words *five* "*hundred*" interlined before the signing of this instrument.

JEMIMA MASTIN, [SEAL.]
JOHN J. MASTIN, [SEAL.]
SARAH A. MASTIN, [SEAL.]
SUSAN N. MASTIN, [SEAL.]
REUBEN F. MASTIN, [SEAL.]
THOMAS H. MASTIN, [SEAL.]
DAVID C. MASTIN, [SEAL.]
WILLIAM W. MASTIN, [SEAL.]
MARTHA J. MASTIN, [SEAL.]
By their guardian, JEMIMA MASTIN, [SEAL.]

Witness, THOMAS VAUGHAN,
JOHN S. HAINE.

STATE OF TENNESSEE,
McMinn County.

Personally appeared before me, Thomas Vaughn, Clerk of the County Court for the County and State aforesaid, John J. Mastin and Jemima Mastin, as well for herself as guardian of the minor heirs of Thomas W. Mastin, deceased, who acknowledged the due execution by them of the foregoing memorandum of sale and title bond on the day it bears date, and for the purposes therein expressed.

Given under my hand at office, in Athens, this 7th day of April, 1854. T. VAUGHAN, *Clerk.*

STATE OF TENNESSEE,
Polk County.

April 8th, 1854, 6 o'clock P. M.

Then was the foregoing memorandum of contract or title bond together with the clerk's certificate noted in Note Book A, page 124, registered in my office, in Benton, in Book E, pages 213–215.

ROBT. N. FLEMING, *Register.*

Register's fee, $0 75.

STATE OF TENNESSEE,
Polk County.

I, Robt. N. Fleming, Register for the County and State aforesaid, hereby certify that the foregoing is a true and correct copy of the memorandum of contract or title bond named therein, and of the clerk's and register's certificates thereto remaining of record in my office.

Given under my hand at office, in Benton, this 18th day of Aug., 1854. ROBT. N. FLEMING, *Register.*

Register's fee, $1 00.

Exhibit 12. *Copy of a Decree.*

SARAH ANN, SUSAN N., REUBEN F., THOMAS H., DAVID C., WILLIAM W., and MARTHA JEMIMA MASTIN, minor heirs of THOS. W. MASTIN, dec'd, by their guardian JEMIMA MASTIN,

vs.

JOHN B. MASTIN and JOHN J. MASTIN, administrators of THOS. W. MASTIN, dec'd, and JOHN J. MASTIN, in his own right as one of heirs at law of the said THOS. W. MASTIN, dec'd.

Be it remembered that, on the 26th day of August, 1854, this cause came on to be heard before the Honorable Seth J. W. Lucky, Chancellor, upon the report of the Clerk and Mastin, made in pursuance of an interlocutory order of the present term of the Court, and also upon the report of Jemima Mastin, guardian of the minor heirs aforesaid; and it appearing to the satisfaction of his Honor that, on the 6th day of April, 1854, in consideration of the sum of

fifty thousand dollars, to be paid in four equal instalments, the first falling due on the 6th day of September, 1854, the second on the 6th day of December, 1854, the third on the 6th day of February, 1855, and the fourth on the 6th day of April, 1855, the said Jemima Mastin, in her own right as widow, and also as guardian of the minor heirs aforesaid, and the said John J. Mastin, in his own right as adult heirs of the said Thos. W. Mastin, dec'd, bargained and sold to the Polk County Copper Company one undivided third interest, being the entire interest of the said Thomas W. Mastin, dec'd, in 160 acres of land, more or less, including the old John Davis mine in Ducktown, Polk County, Tennessee; said 160 acres to cover the whole length of the vein opened on said John Davis' property, the division link of which has been run and marked by the parties since said sale, and for a description of which reference is made to the deed executed by John Caldwell to said Polk County Copper Company, dated the 10th day of June, 1854, and registered in the Register's office of Polk County, Tennessee; and they also agreed for the consideration aforesaid to convey to said company their undivided third interest, being one-third of the mineral right. Mining privileges, as they and others held them in and to the Nash property adjoining the John Davis property, being the mineral interest in sixty acres, and a fee simple in the minerals. And it also appearing that for the consideration aforesaid they agreed to relinquish to Lyman W. Gilbert all and every claim and right they had in and to the property known as the Elias Davis property, acquired by an agreement with Elias Davis; also to relinquish to Samuel Congdon all their interest and claim in and to the Nelson Carter property, by virtue of a contract made with said Nelson Carter, for more full description of which lands reference is made to the interlocutory decree in this cause of the 24th of February, 1854. And it appearing to the satisfaction of the Court from the report of *of* said guardian, and also from the report of the Clerk and Master to the present term, which reports being unexcepted to, are in all things confirmed, that said sale was a proper one and beneficial for said heirs, and should receive the confirmation of this Court; his Honor is, therefore, pleased to order, adjudge, and decree, and does order and decree, that said sale be in all things confirmed, and that all right, title, and interest, which the widow and heirs of Thomas W. Mastin, dec'd, have in and to the lands agreed to be sold to the said Polk County Copper Company, which are described also in the bill in this cause, be divested out of them and be vested in said company forever, subject, however, to a lien for the purchase money of fifty thousand dollars; and it is further ordered that said lien shall cease on the full payment of said sum of fifty thousand, and not otherwise, and the relinquishment above mentioned shall also be executed on the payment of said money. And it further appearing to the satisfaction of the Chancellor that, on the said 6th day of April, 1854, the said parties, Jemima Mastin, in her own right, and as widow, and also as guardian aforesaid, and the said John J. Mastin, agreed to sell and convey to the United States Copper Com-

pany their undivided third interest in the balance of the John Davis lands in Polk County, containing one thousand acres, more or less, described in the bill in this cause, and also the numbers, boundaries, and description of which land will be known by an inspection of the deeds therefor, executed by John Davis, Elias Davis, and Nelson Carter, to John Caldwell, Alexander H. Keith, and Thomas W. Mastin, and registered in the office of the Register of Polk County, Tennessee, upon being paid the sum of thirty-three thousand three hundred and thirty-three dollars in the manner hereinafter stated, and receiving scrip or certificates of stock for one full sixth part of the capital stock of said United States Copper Company. Said thirty-three thousand three hundred and thirty-three dollars to be paid out of the first proceeds of said lands and property arising from sales or mining operations; but if the first proceeds do not amount to $100,000, then the heirs of the said Thomas W. Mastin, dec'd, were to receive only one-third of the amount of said proceeds. And it appearing to the satisfaction of the Court from the report of the Mastin, and also from the report of said guardian, that said sale is a proper one and beneficial to said heirs, his Honor is further pleased to order and decree that said sale be, and the same is, hereby in all things confirmed; and it is further ordered that all right, title, and interest, which the said widow and heirs of Thomas W. Mastin, dec'd, have in and to the said lands agreed to be sold to said United States Company be divested out of them and be vested in said company forever, subject, however, to a lien for said purchase money of $33,333, or to their *pro rata* share of the proceeds of sale as hereinbefore provided, and also to a lien for the issuance of said certificates of one-sixth of the capital stock of said company as aforesaid. His Honor further orders and decrees that said purchasers have a copy of this decree certified for registration in Polk County as a muniment of title.

THE STATE OE TENNESSEE.

I, William Lowry, Clerk and Mastin of the Chancery Court at Athens, certify the foregoing to contain a true and perfect transcript of so much of the decree pronounced in said cause at the August term, 1854, of said Court as pertains to the title of the lands described in the pleadings in said cause, as appears of record in my office.

Given under my hand at office in Athens, September the 27th, 1854.

WM. LOWRY, *Clerk & M.*,
By WILLIE LOWRY, *D. Cl'k & M.*

STATE OF TENNESSEE,
Polk County.

September 30th, 1854. 12 o'clock M.

Then was the foregoing decree of the Chancery Court, together with the Clerk's certificate, noted in note book A, page 135, registered in my office in Benton in Book E, page 425—427.

ROBT. N. FLEMING, *Register.*

2177

Exhibit 13.

Copy.

"Memorandum of contract made and entered into this 6th day of April, 1854, by and between Alexander H. Keith, of the one part, and the Polk County Copper Company of the other part, witnesseth: That the said Alexander H. Keith, for and in consideration of the sum of sixty thousand dollars to be paid to him in lawful money by said Polk County Copper Company, as follows: that is to say—twenty thousand dollars in eight months; a like sum in ten months, and a like sum in twelve months from this date, for which several sums to be paid to him as aforesaid, the said Polk County Copper Company have executed their several bills single of even date herewith; he the said Alexander H. Keith hereby bargains and sells to said Polk County Copper Company an undivided one-third part of the mineral property in Duck-town, Polk County, Tennessee, known as the John Davis mine, embracing about one hundred and sixty acres of land, more or less, as may be required to furnish an ample margin of not more than ——— feet on the southeast side of the main vein passing through said property, and on which the openings have been made; said land, as herein bargained and sold, is to cover the whole length of the vein opened on the said John Davis property, so called and known, the division line to be run and marked by Thomas H. Calloway, S. Congdon, John Caldwell, A. H. Keith, and John J. Mastin; said Alexander H. Keith also bargains and sells his undivided interest, being one-third of a mineral interest and mining privilege on 60 acres of the Nash property adjoining the John Davis property, and also to relinquish to Lyman W. Gilbert all his claim and property in and to the property known as the Elias Davis property, and also to relinquish to Samuel Congdon all claim and interest to the Nelson Carter property in Polk County.

And the said Alexander H. Keith, for the considerations aforesaid, hereby covenants and binds himself, his executors, administrators, and heirs, to make to said Polk County Copper Company, or their assigns, on the full payment of the several sums aforesaid, a deed in fee simple to his undivided interest in the John Davis property, as aforesaid, and to his mineral interest in the Nash property, and also to relinquish by deed to Lyman W. Gilbert, his interest in the Elias Davis property, and also to relinquish by deed to Samuel Congdon his interest in the Nelson Carter property. And the said Alexander H. Keith hereby further bargains and sells to the United States Copper Company the balance of his undivided interest in the John Davis property, which is one-third of about one thousand acres of land, more or less, the numbers, boundaries, and descriptions of which are set forth in the deeds therefor, executed by John Davis and Elias Davis, of Polk County, to John Caldwell, Thomas W. Mastin and Alexander H. Keith, and most of which are registered in the office of the Register of Polk County, Tennessee, in consi-

deration for which one-third interest, as aforesaid, the said United States Copper Company are to pay to said Alexander H. Keith the sum of thirty-three thousand three hundred and thirty-three dollars, lawful money, to be paid out of the first proceeds of said lands and property, whether by sale of lands or mines, or from mining operations on said property, provided if the first proceeds do not amount to the sum of one hundred thousand dollars, then the proceeds first received, whatever amounts there may be, is to be divided *pro rata*, one-third to said Alexander H. Keith, and so on, until the whole sum, as aforesaid, is paid. And also to grant and issue to him, his heirs or assigns, one full sixth part of the capital stock of said United States Copper Company, estimating said capital stock at the sum of one million of dollars, and on the full payment to said Alexander H. Keith, his heirs or assigns, the sum of thirty-three thousand three hundred and thirty-three dollars, as aforesaid, and the issuance to him, his heirs or assigns, scrip or certificates to the full one-sixth part of the capital stock of said company as aforesaid, he the said Alexander H. Keith binds himself, his heirs, and personal representatives by his covenants and obligations herein set forth, to make to said United States Copper Company, or to their assigns, a deed in fee simple, for his said undivided interest, being one-third part in said one thousand acres of land, more or less, as may be, according to the terms and stipulations of this contract.

In witness whereof the said Alexander H. Keith hereto subscribes his name, and affixes his seal, the date first above written.

A. H. KEITH. [SEAL.]"

Signed, sealed, and acknowledged before undersigned,
A. D. KEYES,
J. B. COOKE.

STATE OF TENNESSEE,
McMinn County.

Personally appeared before me, Thomas Vaughan, Clerk of the County Court for the County and State aforesaid, A. H. Keith, the bargainor, with whom I am personally acquainted, who acknowledged the due execution of the foregoing title bond, on the day it bears date, and for the purposes therein expressed.

Given under my hand at office in Athens, this 7th day of April, 1854. T. VAUGHAN, *Clerk.*

"STATE OF TENNESSEE,
Polk County.

April 8th, 1854, 6 o'clock P. M.

Then was the foregoing memorandum of contract or title bond, together with the clerk's certificate, noted in Note Book A, page 124, registered in my office in Benton, in Book E, pages 215–217.

ROBT. N. FLEMING, *Register.*"

STATE OF TENNESSEE,
Polk County.

I, Robt. N. Fleming, Register for the County and State aforesaid, hereby certify that the foregoing is a true and correct copy of the memorandum of contract or title bond, named therein, and of the clerk's and register's certificates thereto remaining of record in my office.

Given under my hand at office in Benton, August 19th, 1854.

ROBT. N. FLEMING, *Register.*

Exhibit 14.

This indenture made and entered into this twenty-first day of November, one thousand eight hundred and fifty-three, between John Davis, now of Polk County, and State of Tennessee, of the first part, and Henry Young, of the County, City and State of New York, of the second part—Witnesseth, that for and in consideration of the sum of twenty-five thousand dollars in hand, paid to the said Davis by the said Young, the receipt whereof is hereby acknowledged, the said Davis hath this day bargained and sold, and by these doth bargain and sell and convey to the said young, his heirs and assigns, the following described land, situate in the County of Polk and State of Tennessee. Range five east of the basis line, fractional township four south, Ocoee District, it being the northeastern part of the southwest quarter of section fifteen, beginning at a white oak tree near Davis Mill Creek, running thence with a marked line crossing a ridge to a black oak tree, and post oak on Patrick Nash's line; thence north 20° east to the corner of said forty; thence with the Waterhouse and land and lines of Nelson Carter to the beginning, containing forty acres, more or less; excepting one acre of said lot of land, embracing the present meeting house or school house, for the use of the citizens of the township aforesaid; to have and to hold the said lands with its rights, *privileges* and appurtenances to the said Henry Young, his heirs, executors, administrators and assigns forever. And the said Davis for himself, his heirs, executors, administrators and assigns, will forever warrant and defend the above bargained and sold premises to the said Henry Young, his heirs, executors, administrators and assigns, from and against all claims and demands whatsoever.

In testimony whereof the parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written. JOHN DAVIS, [SEAL.]

Signed and sealed and delivered in the presence of
J. T. NEWBERY,
M. H. HANCOCK,
CHAS. A. PROCTOR.

Feb. 14th, 1854.

STATE OF TENNESSEE,
Polk County.

Personally appeared before me, Emmons P. Douglass, clerk of the County Court, for Polk County aforesaid, M. H. Hancock and Chas. A. Proctor, two of the subscribing witnesses to the foregoing deed of conveyance, and after being duly sworn, depose and say that they are acquainted with John Davis, the bargainor, and M. H. Hancock says he was present when the said Davis signed and sealed the same, and on the day of date, and Charles A. Proctor states that the same was acknowledged before him by the bargainor, as his act and deed, and for the purposes therein expressed.

Witness my hand at office in Benton, February 14, 1854.

E. P. DOUGLASS, *Cl'k.*

STATE OF TENNESSEE,
Polk County.

February 14, 1854. 3 o'clock P. M.

Then was the foregoing deed of conveyance, together with the clerk's certificates, noted in note book A, page 121, registered in my office in Benton in book E, page 166—167.

ROBERT N. FLEMING, *Register.*

Exhibit 15.

This indenture, made and entered into this sixteenth day of February, one thousand eight hundred and forty-four, between Henry Young, of the first part, and Charles Congdon and Lyman W. Gilbert, as trustees of the incorporated company known by the name of Mary's Copper Mining Company, of the second part, all of the City, County, and State of New York, witnesseth, that for and in consideration of the sum of six thousand dollars to him, the said Henry Young, paid by the said Charles Congdon and Lyman W. Gilbert, the said Young hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey to the said Congdon and Gilbert, as trustees as aforesaid, that tract or parcel of land situate in the County of Polk, and State of Tennessee, range five east of the basis line, fractional township four south, Ocoee district, it being the northeastern part of the southwest quarter section fifteen, beginning at a white oak tree near Davis' Mill Creek, running thence with a marked line, crossing a ridge to a black oak tree and post oak, on Patrick Nash line; thence north 20° east to the corner of said forty; thence, with Waterhouse and the lands and lines of Nelson Carter, to the beginning, containing forty acres, more or less; excepting one acre of said land, embracing the present meeting-house, or school-house, for the use of the citizens of the township aforesaid. To have and to hold the said thirty-nine acres to the said Congdon and Gilbert, as trustees of the said Mary's Mining Company, and their representatives forever. And the said

Young doth hereby covenant with the said Congdon and Gilbert that he hath good right to convey the said property to said Congdon and Gilbert, and that the same is unencumbered; and further, that he will forever warrant and defend the above property, to the said Congdon and Gilbert, as trustees as aforesaid, and their representatives, from and against the claims and demands of all persons whomsoever.

In witness whereof, I have hereunto set my hand and seal, the day and year first above written.

HENRY YOUNG. [L. S.]

Signed, sealed, and delivered in the presence of

JOSIAH S. LEVERETT,
WILLIAM T. FAINHAM.

STATE OF NEW YORK,
City and County of New York.

Personally appeared before me, *this June 5th*, 1854, William T. Fainham, a commissioner of deeds duly appointed by the Governor of the State of Tennessee, a commissioner to take acknowledgments of deeds, &c. &c., residing in the City and State of New York, the above named Henry Young, with whom I have been made, and now am, personally acquainted, and who acknowledged that he executed the above deed for the purposes therein contained.

WILLIAM T. FAINHAM. [L. S.]
Commissioner of Deeds for the State of Tennessee, residing in the City, County, and State of New York.

STATE OF TENNESSEE,
Polk County.

June 24, 1854. 5 o'clock P. M.

Then the foregoing deed of conveyance, together with the commissioner's certificate, noted in Note Book A, registered in my office in Benton, in Book E.

ROBERT N. FLEMING, *Register.*

Whereas, the true intent and meaning of the foregoing deed was to convey to, and vest in, the within named Charles Congdon and Lyman W. Gilbert, the fee of the within described lands; now therefore, more fully to effect such purpose, and in consideration thereof of one dollar received from them, I, the within named Henry Young, have granted, conveyed, and released, and do hereby grant, convey, and release, to the said Charles Congdon and Lyman W. Gilbert, trustees of the Mary's Mining Company, their heirs and assigns, the within described piece and parcel of land, and all my right, title, and interest in and to the same, to have and to hold to them, the said Charles Congdon and Lyman W. Gilbert, their heirs and assigns, forever.

Witness my hand and seal, this twenty-fifth day of August, one thousand eight hundred and fifty-four.

HENRY YOUNG. [L. S.]

In presence of

JOSIAH S. LEVERETT,
WM. J. SINCLAIR.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss.

Be it remembered, that on this twenty-sixth day of August, in the year one thousand eight hundred and fifty-four, before me, a commissioner residing in the City of New York, duly commissioned and qualified by the executive authority of the State of Tennessee to take the acknowledgments of deeds, &c. &c., to be recorded in the said State of Tennessee, personally appeared Henry Young, to me known to be the individual named in, and who executed, the above instrument, and acknowledged that he did sign, seal, and deliver the same as his free act and deed, and on the day and year therein mentioned, and for the consideration, uses, and purposes therein expressed. In witness whereof, I have hereunto subscribed my name and affixed my official seal, the day and year above written.

WM. J. SINCLAIR, [L. S.]
Commissioner for the State of Tennessee, residing in the City, County, and State of New York.

STATE OF TENNESSEE,
Polk County.

October 10th, 1854. 10 o'clock A. M.

Then was the foregoing deed of conveyance (the first part of which was registered heretofore, June 24, 1854, 5 o'clock P. M., at page 347, of Book E), together with the certificate of the commissioner, William T. Fainham, and the certificate of the register, also the addendum, or conveyance additional, to said deed, and the certificate of the commissioner, Wm. J. Sinclair, noted in Note Book A, page 136, registered in my office in Benton, in Book E, pages 440–442.

ROBT. N. FLEMING, *Register.*

Exhibit 16. *Power of Attorney. Wm. Park Lea to John Hambright.*

"Know all men by these presents, that I, William Park Lea, of the County of Jackson, and State of Missouri, have this day made, constituted and appointed, and by these presents do hereby make, constitute and appoint, John Hambright, of the County of McMinn, and State of Tennessee, my true and lawful attorney, for me and in my name, to sell and dispose of by quit claim, the following tracts or parcels of land, or any part thereof, in the County of Polk, and State last aforesaid, to wit: the east half of the southwest quarter of section fifteen, in fractional township four south, and range five

east of the basis line in the Ocoee district. Also the east half of the northwest quarter of section twenty-two, in the same township and range, containing by estimation one hundred and sixty acres, for such price or sum of money, and to such person or persons, as he shall think fit and convenient; and also for me and in my name, and as my act and deed, to sign, seal, execute, acknowledge and deliver, such deed or deeds, and conveyance or conveyances, for the sale and disposal thereof, or any part thereof, with such clause or clauses, covenant or covenants, and agreement or agreements, to be therein contained, as my said attorney shall think fit and expedient; hereby ratifying and confirming all such deeds, conveyances, bargains and sales, which shall, at any time hereafter, be made by my said attorney, touching or concerning the premises.

In testimony whereof, I have hereunto subscribed my name and affixed my seal, this 29th day of July, A. D. 1853.

WILLIAM P. LEA, [SEAL.]

Witness: S. W. BONTON,
W. CLAUDE JONES.

"STATE OF MISSOURI,
County of Jackson, ss.

On the fifteenth day of September, A. D. one thousand eight hundred and fifty-three, personally appeared before me, Henderson Young, the Judge of the Circuit Court within and for the Sixth Judicial Circuit of the State of Missouri, William Park Lea, who is personally known to me to be the same person whose name is subscribed to the foregoing power of attorney, and acknowledged that he executed the same for the uses and purposes therein mentioned.

Given under my hand and seal, the day and year last above written.

H. YOUNG, [SEAL.]"

"STATE OF MISSOURI,
Jackson County, ss.

I, Sam'l D. Lucas, Clerk of the Circuit Court within and for the County aforesaid, do certify that the Honorable Henderson Young, before whom the foregoing acknowledgment was made, and who has therein subscribed his name, was at the time of so doing the sole and presiding Judge of said Circuit Court, duly commissioned and qualified, that his said certificate is in due form of law, and that his signature thereto is genuine. In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office in Independence, this 15th day of September, A. D. 1853.

[SEAL.] SAM'L D. LUCAS, *Clerk.*
By O. P. W. BAILY, *Do.*"

"STATE OF TENNESSEE,
Polk County.

April 22d, 1854, 3 o'clock P. M.

Then was the foregoing power of attorney, together with the

Judge's and Clerk's certificates noted in Note Book A, page 125, registered in my office in Benton, in Book E, pages 228–229.

ROB'T N. FLEMING, *Registered.*"

STATE OF TENNESSEE,
Polk County.

I, Rob't N. Fleming, Register for the County and State aforesaid, hereby certify the foregoing is a true and correct copy of the power of attorney named therein, and of the judge's, clerk's, and register's certificates thereto, as appear of record in my office in book E, pages 228–229.

Given under my hand at office in Benton, this 29th day of June, 1854.

ROB'T N. FLEMING,
Register for Polk Co., Tenn.

Answer of John Caldwell to Amended and Suppl'l Bill.

The answer of John Caldwell to the amended and supplemental bill of complaint filed against him and others, by William Pinckney Lea, in the Circuit Court of the United States for the District of East Tennessee.

This respondent, saving and reserving all benefit of exception, &c., for answer to said bill, says, he has seen, and heard read, the joint and several answer of Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon, and Lymen W. Gilbert, sworn to before the Honl. John G. Gant on the 6th day of February, 1855, and begs leave to save time and expense to adopt said answer as his own in relation to all the matters and things it professes to answer, as also to have all and singular the benefit of the defences set up in said answer as well as the defences in the answer to the original bill in this cause.

This defendant could give no further answer or greater discovery than as is given in the answer of the said parties above mentioned, and he hereby avers that he believes all and every part of said answer to be true, and adopts the same as his, with the following exceptions:—

The purchase from John Davis, of Keith, Caldwell and Mastin, included some half dozen tracts of land, for which title was not derived under William Park Lea, except as to the land covered by the deed in dispute, and one other tract of nine acres respondent inspected the title papers, he, John Davis had deeds for all the tracts but one, and for this he held a title bond; his deeds were all perfect on their face, as respondent remembers and believes as for the tract of land for which the title bond was given out was regular, this though was no part of the land in dispute. The deeds had not been before registered in several cases, in others they had; in some cases the deeds of John Davis's venders had not been registered, and in this situation was the deed of William Park Lea to him, and also several other of said John Davis's venders' deeds; again, the title bond referred to was in the same condition.

Respondent states that said John Davis was anxious to leave the

county, and lived some thirty miles from Benton, the county seat of Polk County; respondent then believed, and still believes, that all of the deeds were in a perfect state, one only required registration; the trouble of doing this respondents, as far as possible, wished to be freed of, as it is rather difficult to get witnesses, in a mountain country, to attend before the clerk for such a purpose. Elias Davis, a son of John Davis, volunteered, that if respondents, Mastin and Keith, would pay said John his money for the lands purchased of him, he would attend to having said title papers registered; this respondent and his other co-purchasers agreed to this on condition of said Elias giving his bond to that effect, which he did in the penalty of three thousand dollars, but this respondent expressly denies said bond was given with any such view, motive, or intent, or purpose, as is untruly alleged by complainant in his amended and supplemental bill, but for the purpose alone of having said Elias to be one the witnesses to said deeds brought before the clerk, the deeds proved by them, and registered. Respondent denies that any special reference was made in said deed to the deed of William Park Lea, or that it was intended to secure or provide for any faults, fraudulent or untrue attestation or probate of said deeds; this respondent avers that said bond was made for no other purpose than stated, that its premises were that said Elias Davis was to have and attend to the registration of said deeds, before referred to; respondent does not believe it contains any other provision; respondent has seen the bond once since its execution, and only once, and then gave no special or minute attention to it, in fact, did not read it, and this is the only time he recollects of seeing it since its execution; it has never been in respondent's possession that he has any knowledge of, recollection, or belief of; the last time he seen it it was in the possession of Alexander H. Keith, which was in August, 1854; he has given both the contents and object of said bond as far as he is able to do, and will further say that said bond is not in his power or under his control; he has no objection to its production. Respondent further answering, state that in the execution of said bond the purchase money for all the lands was paid to said John Davis, and he moved west. Respondent states that the first time he seen said deed of William Park Lea was, as he is stated in his original answer, in the year 1847; that it was in the same condition when produced at the time of the purchase of Keith, Caldwell, and Mastin; the name of Elias Davis and Young Davis was on it as subscribing witnesses in 1847, and at the term of the purchase. Young Davis, as respondents are informed and believes, after he had been an attesting witness to said deed, had, for some cause, left the State of Tennessee, but after an absence of some time, had returned after the contract of purchase was made, but before it was completed by the execution of the deed of John Davis to respondents, Keith and Mastin. When said deed was executed, and after the bond given by Elias Davis, said Young Davis came with this respondent to Cleveland, and proved his attestation

of said deed before the clerk of the County Court of Bradly County. This respondent avers, from information and belief, said deed was witnessed by the attesting witnesses to it, on the day of its date, and at the time of its execution by William Park Lea, and that its non-registration was not the result of frauds. Respondent here begs leave to state that it was a very common thing for lands to be sold in that section of county several times, and deeds taken without registration. After said Young Davis had thus proved his attestation of the deed, respondent took it to Benton, and left it in the clerk's office of Polk County, for said Elias, who lived some thirty miles from there, to come down to Benton, and from his attestation, said Davis came down and proved it, and kept possession of the deed until, as he is informed and believes, it passed into the hands of Honl. John C. Gant, in whose hands it remained, so far as respondent knows or believes, until after the sale of this respondent, Keith and Mastin, to the Polk County Copper Company, after which sale it passed from said Gant's possession to possession of Thomas H. Calloway, and this respondent, first one and then the other, and is now in the possession of said Calloway, as he is informed and believes. Respondent believes, from information, that said deed remained in the possession of John Davis from its execution until his sale to respondent, and Mastin and Keith, then passed to the respondent for the purpose above stated, then was left at the clerk's office by him in Benton, for the purpose stated, was then proved as stated by Elias Davis, and lifted by him, and kept until it passed into the possession of the Honl. John C. Gant, as he is informed and believes, and then retained by said Gant until it came to possession of respondent and Thomas H. Calloway. This is all the knowledge, information, and belief of respondent on the subject.

Respondent further answering, states it is true there was a bond taken from Samuel Congdon and Thomas H. Calloway, and its conditions were as stated in the answer adopted by this answer, and said bond was left in the possession of James B. Cook, and respondent has not seen it since, nor does he know where it is, nor is it under his control, and respondent will here expressly state at the time of its execution of said bond of Calloway and Congdon to respondent Keith and Mastin, he had not then been informed of, or had any knowledge of the alleged title of complainant. Respondent, to the best of his knowledge, information, and belief, has given the utmost disclosure and answer in his power, on the deed of said William Park Lea's title bond to Elias Davis, and bond of Congdon and Calloway, and in the answer adopted herein of Congdon, Calloway, Waterhouse, and Gilbert, all the knowledge, information, and belief he can give in the matters responded to is given, and he adopts the same.

Respondent having fully answered, begs leave, as before prayed, that he be allowed all the defences of the said answer, and their answer, and the original answers, that the injunction receiver or

manager, as prayed for, be refused, and complainant's bills dismissed, and he be allowed his costs, &c. JOHN CALDWELL.

JAMES B. COOK,
Sol't. for Resp.

UNITED STATES OF AMERICA.

This seventh day of February, 1855, personally appeared before me, John C. Gant, one of the Judges of the Circuit Courts for the State of Tennessee, John Caldwell, and made oath that the matters and things of his foregoing answer, when stated, or as his personal knowledge, are true, and when stated as information, he believes them to be so. Sworn to and subscribed before me the date above written. JOHN CALDWELL.

JOHN C. GANT,
Judge of the 3d Judicial Circuit of the State of Tennessee.

Answer of Jemima Mastin and others, to Amend'd and Suppl. Bill.

The joint and several answers of Jemima Mastin and John Mastin, in their own right, and of Sarah A. Mastin, Susan N. Mastin, Reuben F. Mastin, Thomas H. Mastin, David C. Mastin, William W. Mastin, and Martha J. Mastin, by the guardian, said Jermeria Mastin, to the amended and supplemental bill of complaint filed against them and others in the Circuit Court of the United States for the District of East Tennessee, by William Pinckney Lea.

These respondents reserving to themselves all right of exception to said bill, for answer to the same, say they, the said Jemima and John J. Mastin, have seen and heard read the joint and several answers of Euclid Waterhouse, Thomas H. Calloway, Samuel Congdon, and Lymen W. Gilbert, to said bill, and sworn to by said Congdon, Waterhouse, and Calloway, before the Hon'l John C. Gant, on the 6th day of February, 1855, and could not give any further, or other, or more full answer than there is given to the matters and things of said bill, and the discoveries therein prayed, except that the respondent, John J. Mastin, has heard that Elias Davis did execute a bond or agreement to the parties charged in the bill, he has no personal knowledge of said bond or agreement, has never seen the same, nor is it in his possession or under his control, but he is informed and believes that said paper is not of the character charged in said bill, but that said instrument was executed under the following circumstances, and contains the provisions he will proceed to state: The purchase of Caldwell, Keith, and Mastin, from John Davis, covered bonds or tracts of land; an inspection was had of the title papers, and they were found to be all regular on their face, but some of them, perhaps the greater portion, had not been registered. Said John Davis was anxious to start for the western country; it was some thirty miles to Benton, the county seat of Polk County. Elia Davis, son of said John, agreed to take said John's title papers and have them taken to Benton for registration; this involved an expense; a calculation was made of the probable expense for fees,

and it was found to be about ten dollars; this was handed over by said John to Elias and Keith. Caldwell and Mastin took the bond or agreement from Elias that he would attend to taking said papers to Benton; and having them registered; there was no allusion made to the deed of William Park Lea more than to the other title papers. The purchase money was then paid over to said John Davis, and the title papers handed to Elias; said Elias was bound in the sum of three thousand dollars. This is all respondent, John J., information, knowledge, or belief on the subject; he believes the facts to be as he has stated; respondent also has no knowledge or information where said paper is, or in whose possession or control, and never considered it of any importance, nor does he believe it was so regarded, its object being to secure the attention of said Elias; and when the papers when registered, everything was accomplished that was claimed to have said papers placed on registration. Respondent, Jemima, states that she has no personal knowledge of the matter inquired of relative to said bond or agreement, but is informed and believes the facts to be as stated by John J. Mastin, and she believes and adopts his statement. She has never seen said bond. It is not in her possession, under her control, nor does she know where it is. As to her words, she believes they have no other information, knowledge, or belief, than as above stated, and that they have never seen nor have in possession, under their control, nor know who has, or where said paper or bond is.

And the said respondent, John J. Mastin, for himself, and as also Jemima for herself, and also as guardian for her said wards, adopts the answer of the respondent before referred to in all particulars, and believe it to be true as therein stated, which is to save expense, and because they could state no other or further matter than is in said answer set forth and discovered, and they pray to be allowed all the defences set up in said answer, as well as in the original answer, as fully as if herein again set forth and inserted on in due form, and the wards of said Jemima submit themselves and their rights to the protection of this Hon'l. Court, and having fully answered, pray to be hence dismissed, with their costs, &c.

JEMIMA MASTIN,
JOHN J. MASTIN,
SARAH A. MASTIN,
SUSAN N. MASTIN,
REUBEN F. MASTIN,
THOS. H. MASTIN,
DAVID C. MASTIN,
WILLIAM W. MASTIN.
MARTHA J. MASTIN.
By their guardian, JEMIMA MASTIN.

UNITED STATES OF AMERICA.

This day personally appeared before me, John C. Gant, one of the

Judges for the Circuit Court of the State of Tennessee, Jemima Mastin and John J. Mastin, and made oath in due form of law that the matters and things of their foregoing answer as stated on their own knowledge are true, and those stated on information they believe to be so.

JOHN J. MASTIN,
JEMIMA MASTIN,
for herself and for
SARAH A. MASTIN,
SUSAN M. MASTIN,
REUBEN F. MASTIN,
THOMAS H. MASTIN,
DAVID C. MASTIN,
WILLIAM W. MASTIN,
MARTHA MASTIN,
her wards.

Sworn to and subscribed before me, this 6th day of February, 1855. JOHN C. GANT,
Judge of the 3d Judicial Circuit in the State of Tennessee.

The Separate Answer of Alex. H. Keith to the Amended and Supplemental Bill.

The separate answer of Alexander H. Keith to the amended and supplemental bill filed by William P. Lea, in the District Court of the United States for the District of East Tennessee, at Knoxville, against this respondent and others.

This respondent, reserving all right and benefit of exception both to the form and substance of complainant's said bill for answer thereto, or to so much thereof as he is advised it is material and proper for him to respond, answering says: That so far as relates to the charges in said bill, in regard to the records and papers in the offices of the Entry Taker and Register of the Ocoee District, and the alterations and erasures in said records and papers, and also in regard to the manner in which, and the persons by whom, the business in those offices was discharged, this respondent has no knowledge except what he has obtained upon investigations made by him since the filing of complainant's original bill. Since the exhibition of complainant's amended bill in this Honorable Court, this respondent has not had an opportunity of making an extensive examination of the records of the offices aforesaid, but he has inspected and read the answer of his co-defendants Calloway, Waterhouse, Gilbert, and Congdon, and has also examined the exhibits to said answer; and this respondent states that said answer and exhibits present more fully, than his information would enable him to do, all the facts connected with the records aforesaid.

Respondent further states that he believes said answer has given a true statement of facts in relation to all the charges in said bill concerning the records and papers in the offices aforesaid, and re-

spondent therefore adopts said answer as a full and complete reply to the said charge so far as this respondent is concerned; and respondent will proceed to answer the other portions of said bill of which he is required to speak individually, and about which he had any knowledge or information more than is set out in the answer of his co-defendants as above stated.

In relation to the certified copy of entry No. 5446, alleged to have been in the Entry Taker's office at or about the time of the filing of the original bill in this cause, and to be now missing, this respondent will state that shortly after the filing of said original bill this respondent, in connection with several of his co-defendants, made a partial examination of the records and papers in said Entry Taker's office, and respondent has an impression that the certified copy aforesaid was seen and examined at that time, but whether it was in the name of William P. Lea, Wm. P. Lea, or William Park Lea, this respondent has no distinct recollection, and is therefore unable to state in whose name it was. This respondent further states that said certified copy was not taken from the office by him, nor by any other person for him, or with his knowledge or consent, but so far as he knows it was left in said office. If it *it* is not now in said office respondent does not know where it is; he has been informed, however, and so believes the fact to be, that it was seen in the hands of complainant's agent, Albert M. Lea, at or about the time of the taking of J. C. Tipton's deposition.

This respondent denies that the possession of the land in dispute by John Davis and those claiming under him, was fraudulent, or was under a fraudulent grant, or fraudulent deed; he denies that the registration of the deed from William Park Lea to John Davis was fraudulently postponed, and he denies that the possession of the grant or deed for said land was fraudulently concealed from complainant; on the contrary, he alleges that the possession of said land was open, notorious, and adverse, and that the statute of limitations does apply, and does protect this respondent and his co-defendants in the possession of said land.

This respondent states that in the contract of sale to Polk County Copper Company, an obligation was taken on some of the stockholders in said Company, binding them to quiet the claim of the said William Park Lea to said tract of land; said obligation, as well as respondent remembers, was placed in the hands of James B. Cook, Esquire, for safe keeping. Respondent is not certain that he ever saw said paper, but he believes its contents are correctly stated in the answer of his co-defendants hereinbefore referred to. This respondent admits that he sold his interest, being an undivided third in the forty acres now in dispute, to the Polk County Copper Company; and he also admits that he is interested as a stockholder in said company, but he denies that he was *silently* interested in said company at the time of its purchase; his interest was well known at and before the time of said purchase; but this respondent submits

to the honorable court that it cannot effect the complainant's right to said land whether this respondent was or was not one of the stockholders of said company. This respondent denies, according to the best of his knowledge, information and belief, that the deed from William Park Lea to John Davis was in an imperfect state on its face long after or at any time after its ostensible date, in other respects than its want of probate and registration. And respondent denies as aforesaid that either of the subscribing witnesses to said deed signed his name thereto long after the date of the said paper, but respondent believes, and so charges the fact to be, that said deed was duly attested by both of the subscribing witnesses at the time of its date and of its execution by the said William Park Lea.

Respondent admits that the purchasers from John Davis at the time of the execution of this deed as set forth in the answer to the original bill, took from his son, Elias Davis, an obligation, a true copy of which is hereto annexed, marked exhibit A, and prayed to be taken as part of this answer, the original shall be produced on the final hearing, or whenever called for by the hon'ble court.

Said paper was supposed by this respondent and his co-defendants to be lost, until very recently it was discovered to be in the possession of James B. Cook, Esquire, with whom it had been deposited by some of the parties. Respondent states that said paper is not dated, but it was drawn up and executed at the time of the date of the deed from John Davis, a copy of which has heretofore been exhibited in this cause, and should bear even date with said deed; the reason of its execution was that the said John Davis when he made the deed and received the consideration for his land, was just ready to remove with his family to the West, and not having his deeds and title papers all properly registered, and having no legal title to the fifteen acres of land described in said obligation, the said Elias Davis undertook in his father's name, and for his benefit, to do that which he was bound to do before he could require the payment of the purchase money for said land.

This respondent has not the deed from William Park Lea to John Davis, and does not remember the precise date of its registration; but respondent believes that it was proven and registered, or at least partially proven, before the execution of said obligation by Elias Davis, but upon this point respondent speaks from memory and may be mistaken, and respondent states that said obligation was not taken on account of any defect or supposed defect in the title papers for the land now in dispute, but merely for the purposes set forth upon its face.

This respondent in answer to the charges in said bill in relation to the appearance and possession of the deed from William Park Lea to John Davis, and other matters connected therewith, adopts the answer of his co-defendants, believing that said answers give a true statement of the facts. And respondent having fully answered all

the charges in complainant's bill, so far as he is required to answer specially, prays to be dismissed with his costs.

A. H. KEITH.

WILLIAM F. KEITH, *Sol. for Resp't.*

STATE OF TENNESSEE,
McMinn County.

Before the undersigned, one of the chancellors of the State of Tennessee, this day personally appeared Alexander H. Keith, the respondent in the foregoing answer, and made oath in due form of law, that the facts therein stated of his own knowledge are true, and those stated from information he believes to be true.

A. H. KEITH.

Sworn to and subscribed before me 9th February, 1855.

T. NIXON VAN DYKE,
Chancellor 5th Dist. Tennessee.

Exhibit A. (*to Alex'r H. Keith's Dep's.*)

I do hereby obligate and bind myself, my heirs and assigns to in the penal sum of three thousand dollars to John Caldwell, Thos. W. Mastin, and Alex. H. Keith, but to be void on the following conditions, viz., in connection with other lands, John Davis has sold to the said Caldwell, Mastin, and Keith, a certain tract of land containing fifteen acres more or less, it being the southwest fractional quarter of section twenty-three, range five east, fractional township four south; the title to said land is to be made by John B. Smith to the said Mastin, Caldwell, and Keith. And I further obligate as above that I will see that the deeds to the lands that the said John Davis sold to said Mastin, Caldwell, and Keith are all registered in due form, and the fees paid by me for said Davis as the law requires.

ELIAS DAVIS.

HEZEKIAH WITT,
JOHNSON SUIT.

Further Answer of Polk Co. Copper Co.

The further answer of the Polk County Copper Company to the original bill of complaints against her and others filed in the Circuit Court of the United States, for the District of East Tennessee, at Knoxville, by William Pinckney Lea.

This defendent saving and reserving to herself the same benefit of exception to the said original bill, as by their former answers to such original bill is saved and reserved for further answer to such original bill as to the matters to the third exception taken to her former answer, say, that she hereby adopts, and make as her answer to said third exception and the matters thereof, the further answer of Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon, and Lymen W. Gilbert, to the matters of said exception, which said answer her secretary, Samuel Congdon, has seen and read, and she

hereby adds that she and her said secretary believes the same to be true, as is therein stated, and adopts the same in all particulars.

And having fully, she prays, &c. &c.

Polk County Copper Company.

SAMUEL CONGDON, *Secretary.*

STATE OF TENNESSEE,
McMinn County.

This 16th day of December, 1854, personally appeared before me, John L. Goodall, one of the Judges of the Circuit Court for the State of Tennessee, Samuel Congdon as Secretary to the Polk County Copper Company, and made oath in due form of law that he believes the aforesaid answer of the Polk County Copper Company to be true, as is therein stated, and further, that said corporation have no seal.

SAMUEL CONGDON,
Secretary Polk County Copper Company.

Sworn to, and subscribed before me, the day and date above written.

JNO. L. GOODALL, *Judge.*

WM. PINCKNEY LEA
vs.
POLK COUNTY COPPER COMPANY, *et*, &c. } O. & I. bill.

In this cause, plaintiff by his attorney moved the court that the injunction prayed for in the bill be issued.

WM. PINCKNEY LEA
vs.
POLK COUNTY COPPER COMPANY, *et*, &c. } O. & I. bill.

In this cause, defendants by attorney moved the court for a rule upon the plaintiff to show cause why other and better security for the prosecution of his suit be given, or the same dismissed.

Exceptions to Answer of Calloway, Waterhouse, Congdon, and Gilbert.

WILLIAM P. LEA
vs.
POLK COUNTY COPPER COMPANY, and others.

The complainant excepts to the answer of the defendants, Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon, and Lyman W. Gilbert, and the Polk County Copper Company, and sets down and shows to the court, here, the following causes of exception:—

March Rules, 1855: The complainant by his solicitor moves a reference of the joint amended answer of Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon, and Lyman W. Gilbert, made to the original bill in this cause upon exceptions filed to their original answers thereto, and which exceptions were sustained—said amended answer still being insufficient.

March Rules, 1855: Complainant takes the bill, original and amended and supplemental for confessed as to the Mary's Mining Company for want of an answer.

March Rules, 1855: Exceptions filed by complainant's solicitor, to the joint answer of Calloway, Congdon, Waterhouse, and Gilbert, to the amended and supplemental bill for scandal and insufficiency.

March Rules, 1855: Complainant by his solicitor filed his exceptions to the separate answers of Keith, Caldwell, Mastin's and Polk County Copper Company to the amended and supplemental bill of complaint, for scandal and insufficiency.

Exceptions of Compl'n'ts to the Joint Answer of Thos. H. Calloway and others to Suppl. Bill.

WILLIAM P. LEA
vs.
THOMAS H. CALLOWAY and others.

CIRCUIT COURT OF THE UNITED STATES,
For the District of East Tennessee.

The complainant, by his solicitors, comes, when, &c., and excepts to the joint answer of Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon and Lyman W. Gilbert, made by them to the amended and supplemental bill of complain't, and special causes for the exception is here particularly pointed out.

1. For that all that part of said answer beginning on the 10th line from the bottom at page 30, with the words "Respondents," and ending with the words "passed by" on same page, in 4th line from bottom, is impertinent and scandalous.

2. For that all that part of said answer on page 32, beginning with words "And they" in 2d line, and ending with the words "openly avowed" in 16th line, is impertinent and scandalous.

3. For that all that part of said answer on page 43, beginning with the words "Respondents" in 4th line, and ending with words "have scorned" in the 12th line, is impertinent and scandalous.

4. For that all that part of said answer on pages 51 and 52, beginning with the words "And here," in the last paragraph of page 51, and ending with the words "of this cause," in 5th line of page 52, is impertinent and scandalous, and complainant prays that said impertinent, scandalous and untrue matter, as pointed out in the preceding four exceptions, be expunged.

5. For that the defendants are required to admit or deny the correctness of the tabular statements filed as exhibits to and made part of the bill, but which they decline to do. Supp. 35 and 36 of answer.

6. The defendants are required in the bill to state what became of certificate of location of the land in dispute, and how the same got out of office. It is also charged that the same was last seen in the possession of a gentleman acting for defendant, A. H. Keith, &c.

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And the defendants are required upon this, as upon all other charges of the bill, to answer upon information and belief when they have no knowledge. The defendants fail to answer a part of this charge altogether, and evade giving *information and belief as to any part of it.*

7. For that the defendants do not produce and file with their answer the deeds, grants, and other papers called for; the papers they file only purport to be copies, the complainant is entitled to *originals;* the deed to Davis from Park Lea; from Davis to Caldwell and others; bond of Elias Davis; deeds to Young; to Polk County Copper Company; from Caldwell; from Keith; from Mastins; obligation to quiet Park Lea; compromise with him, and *all* papers relating to either of these transactions; *copies* give no information of the appearance of originals; *when made and how;* and, besides, defendants do not say that they produce copies of *all the papers.*

8. The defendants neither admit or deny that John Davis fraudulently concealed the fact of his holding possession under a *deed* which was not registered, &c., which is very specially charged, and which the answer, if it attempts to reply to it all, seeks to evade by denying that he fraudulently concealed that he was holding possession under the *grant*, and this is even evasively stated.

9. For that defendants do not answer whether James Armstrong Lea, who wrote the location in question, as is charged or admitted, was an assistant of his father in the office at the time it was made, and wrote *many locations for persons desiring to enter lands both before and afterwards.* See page 10 of the bill.

10. It is charged in said bill that *on* the same page of the map or plan of Ocoee District, in which the land in dispute is laid down, there are four entries, exclusive of the contested one, in favor of W. Park Lea; and that the name William Park—Wm. Park Lea, in one or the other form, is written on all these entries by William Park Lea in person. The answer admits the four entries, but is silent as to the same *being written* by William Park Lea himself.

For these, and all other just grounds of exception, the complainant, by his solicitor, excepts to said answer, and prays the judgment of the court thereon. MEIGS, NELSON, SNEED, *Sol.*

Exceptions to Answers of Keith, Caldwell, Mastons and Polk County Copper Company to Amended and Suppl. Bill.

WILLIAM P. LEA
vs.
THOMAS H. CALLOWAY and others.

CIRCUIT COURT OF THE UNITED STATES,
For the District of East Tennessee.

The complainant, by his solicitor, comes, when, &c., and except to the separate answers of A. H. Keith, the Polk County Copper Company, John Caldwell, and the joint and separate answers of

John J. Mastin and others, by them respectively filed as answers to the amended and supplemental bill in this cause, and complainant here states and shows to the court special grounds of exception; that is to say—

1. For that each of said answers are open to the exceptions, that except to the answer of T. H. Calloway and others, to which each of said answers refer, and which they adopt; and complainant doth therefore hereby refer to his exceptions filed to said answer of Calloway and others, and adopt the same as exceptions to the answer of these defendants above named.

2. For that the answer of Caldwell, and Keith and Mastin respectively are not accompanied with the original papers shown in said answer to be in possession of their solicitor, James B. Cooke, and which are called for in the bill.

3. For that the answers of A. H. Keith, J. Caldwell and Mastons does not give the *information* and *belief* as to the original certificate of location, 5446, being in name of William P. Lea, as called for in the bill.

For these and other reasons complainant excepts to said answers, and prays the judgment of the court thereon.

W. H. SNEED, MEIGS, NEILSON, *Sol.*

Replication of Compl'ts to Answers of Resp'ts.

The replication of William P. Lea, complainant, to the answers of Thomas H. Calloway, Euclid Waterhouse, Samuel Congdon and Lyman W. Gilbert, defendants.

This repliant states and avers that his original and supplemental bills are true and sufficient, and that the answers of said defendants jointly filed by them to original bill, and to exceptions sustained to their original answer and to the supplemental bill, are untrue and insufficient; and this the repliant will maintain and prove, &c.

SNEED, *Sol.*

The replication of William P. Lea, complainant, to the answers of A. H. Keith, John Caldwell, the Polk County Copper Company, Jemima Mastin and others, J. Davis and others, defendants.

This repliant avers that his said original and supplemental bills are true and sufficient; and he further avers that the answers of said defendants, filed by them to the original bill, and to the exceptions sustained to their original answer, and to the supplemental bill, are insufficient and untrue; and this the repliant will maintain and prove.

SNEED, *Sol.*

Summons (Mary's Copper Co.)

The President of the United States, to the Marshal of East Tennessee District, Greeting:—

You are hereby commanded to summon "Mary's Company to appear before the Honorable the Judges of the Court of the United

States for the Eighth Circuit, in the District of East Tennessee, at the Court House in Knoxville, on first Monday of March next, to answer the original and amended, and supplemental bill of complaint of William Pinckney Lea, filed in said Court against said corporation and others. And have you then there this writ.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the third Monday of October, 1854, and 79th year of the Independence of the United States.

DAVID H. CUMMINGS, *Clerk.*
By ROB'T H. CAMPBELL, *Dep. Cl'k.*

("Indorsed on back. Iss'd Jan'y 10, 1855, together with copies O, and sup. bills. Came to hand January the 16th, 1855.
SHADE CALLOWAY, *Dep. Marshall.*"

The defendant is required to answer the original and amended and supplemental bills on or before the March rules.

SNEED, *Sol.*

(Indorsed on the back by the Marshal as follows:)

"Search made, and no officer or manager of the Mary's Mining Company to be found in the District of East Tennessee, made known the within to Samuel Congdon by reading the same to him, also delivered to said Congdon copies of original and supplemental bills, but stated that he was no officer or manager of said corporation, that the corporation had never organized, and that the property was conveyed to trustees in the City of New York, and by them he had been directed to take care of the property, which he had done, and continued to do. January 29th, 1853.

SHADE CALLOWAY, *Dep. Marshal.*

Sundries from the Minutes.

CIRCUIT COURT, U. STATES,
District of East Tennessee.

November (28th). Term 1854.

WM. PINCKNEY LEA
vs.
POLK COUNTY COPPER CO., *et al.* } O. & I. Bill.

In this cause plaintiff by his attorney moved the Court that the injunction prayed for in the bill be issued.

WM. PINCKNEY LEA
vs.
POLK COUNTY COPPER CO., *et al.* } O. &. I. Bill.

In this cause defendants by attorney moved the Court for rule upon the plaintiff, to show cause why other and better security for the prosecution of his suit be given, or the same be dismissed.

May Term, 1855. (June 4th.)

WILLIAM P. LEA
vs.
THOMAS H. CALLOWAY, and others.

Be it remembered, that this cause came on to be heard on this 4th day of June, 1855, before the Circuit Court of the United States, the Hon. West H. Humphreys presiding, on the motion made to produce the original of the papers of which copies are given in the answers. On the rule made to refer back for argument the second answer of defendants to original bill, and upon the exceptions to said answers to amended and supplemental bill for scandal and impertinence, and for insufficiency, when it was ordered by the Court that the rule to refer back the second answer to the original bill be refused, said answer being adjudged sufficient.

It is further ordered, that the exceptions taken to the answers to the amended and supplemental bill for scandal and impertinence, be so far allowed, as the matter has been stricken from the answers by the Chancellor, by drawing a pen across the matter, and that said action be in each motion at the cost of the motion to the defendants. It is also further ordered by the Court, that all other exceptions taken to the answers, be and the same are disallowed and overruled at the cost of the motion in each case to complainant, and it is ordered by the Court that complainant shall file his replication during the present term of this Court, and thereupon said replications are filed. And upon the motion of complainant for the production of original papers, it is ordered that the defendants Calloway and others shall produce before a commissioner who may be authorized to take proof, the original deeds purporting to be from William Park Lea to John Davis, and from John Davis to Caldwell and others, and that A. H. Keith shall also produce before a commissioner the bond of Elias Davis, and that Caldwell and Keith shall produce before the commissioner the obligation of Calloway, and another to quiet W. Park Lea's claim. These papers shall be produced before the commissioner upon ten days' notice being given to the defendant, who is required to produce them, and the complainant shall have full opportunity to use said originals in taking proof concerning them, and the said papers shall also be produced at the hearing of this cause if desired by complainant's solicitors. And it is further ordered by the Court that the party producing either of the documents herein ordered to be produced, shall before the commissioner verify the same by his affidavit annexed thereto, as the genuine original.

October Term, 1855. Oct. 9.

WM. PINCKNEY LEA
vs.
CALLOWAY and others.

This cause is continued to the next term of this court, and the

same is open generally for proof under the rules of the court and the former agreement entered into on record, with the right to defendants to serve notice on O. P. Temple, instead of W. H. Sneed.

April Term, 1856. April 15.

WM. P. LEA
vs.
POLK CO. COPPER CO.

This cause continued until the next term of this court, as, on the affidavit of complainant, complainant paying the cost of the present term of this court.

Same Term. April 16, 1856.

WM. P. LEA
vs.
POLK CO. COPPER CO.

On affidavit of complainant, Wm. P. Lea, and on motion of his counsel, it was ordered by the court that this cause be remanded to the rules, with leave to both parties to take testimony for four months, the complainant to pay all the costs accruing for testimony taken by him under this order, and also such further costs as this court may decide was necessarily incurred by defendants in taking further testimony, made necessary or proper to be taken by the proof made by the complainants under this order; and also that complainant have leave to retake the deposition of James C. Maples, if the one heretofore filed in this cause cannot be found.

(*From Record, p.* 79.)

November Term, 1856. Nov. 11th.

WM. P. LEA
vs.
POLK CO. COPPER CO. and others.

In this case, the complainant, by his solicitors, by leave of the court, enters a rule upon the defendants to show cause why process shall not issue from this Court to James S. Bradford, Entry Taker of the Ocoee district, commanding him forthwith to bring or send by such officer or messenger as this Honorable Court may appoint, forthwith into this court, and for the personal inspection of his honor, and as evidence in this case, the following books and papers, in the office, or subject to the control, of said Entry Taker, to wit:—

1. Two memorandum, or index, or day-books, containing the numbers of the several entries, the names of the respective enterers, the date of each entry, the price per acre, the number of acres, and amount; one of which books is marked on the outside, in front, "B." Francis W. Lea," and the other, "Day-Book C."

2. Four bound books, marked A, B, C, and D, being records of location, at 12½ cents per acre and less.

3. All the grant-books containing records of grants to William P.

Lea, or William Park Lea, it being assumed that no entries were made by either until the price of lands fell to one cent per acre.

4. The map or plan of the Ocoee district containing the names of the enterers written on their respective entries, being a bound volume of manuscript maps of the several townships in said district.

5. All locations, and certified copies of locations of all entries made in the name of Wm. P. Lea, or William Park Lea, or any modifications of those names however written.

(Record p. 85.) November Term, 1856.

WM. P. LEA
vs.
POLK COUNTY COPPER CO. and others.

At the request of Cole Sneed, one of the counsel for complainant, it was ordered by the Court that he be permitted to open a sealed package of depositions from Chattanooga, received this day by the clerk from the post office in Knoxville.

November Term, 1856. (Record p. 90.)

Interlocutory Orders.

WM. P. LEA
vs.
POLK COUNTY COPPER CO. and others. } Interlocutory Orders.

For sufficient cause appearing to the satisfaction of the Court in the affidavits of complainant and his agent, Albert M. Lea, presented and filed on former days of the present term, this cause is continued until the next term of this Court, and complainant is allowed to take the deposition of H. D. Douglas, Esqr., to prove the justice's proceedings, mentioned in said affidavit in the suit tried before Josiah Childers, Esqr., in the year 1844, in which William Watkins was plaintiff, and William P. Lea was defendant, and the original account filed in said suit in behalf of the plaintiff against said William P. Lea and Calvin Maples; the deposition of Elizabeth Pace, wife of William L. Pace, as to the ages of her children, and the entries in the family Bible of William L. Pace; the depositions of John H. Payne and William Watkins as to what facts were sworn to by William L. Pace, at the time his deposition was taken in this case, in regard to the times of herding complainant's cattle by said Pace and by William Watkins; the depositions of Johns Runyons, Elisha Dodson, William Rymer, James M. Charles, Eli Rymer, Martin Bates, and Oliver L. Charles, as to said William L. Pace's declarations, when speaking of his evidence in this cause, as to his having been enabled to fix the date, when William Watkins kept the cattle, by the entry in his family Bible as to the age of one of his children, and the depositions of John Woodall, Jesse Brooks, Presby Turner, Solomon Pickle, Josiah Lemons, William Crawford, Hiram Roberts, Samuel McJunkin, —— Capehart, and Gibson Perry, as to any

facts or circumstances within their knowledge, tending to establish that the deed, mentioned in the pleadings and proofs in this case, under which the defendants claim title, purporting to have been executed by William P. Lea to John Davis, is a forged and fraudulent paper. The testimony to be taken in behalf of complainant shall be restricted to the points above mentioned, and shall be taken within three months from this date at the cost of complainant. The defendants shall be allowed the next succeeding two months within which to take any rebutting testimony as to any proofs which may be made in behalf of complainants by all or either of the above named witnesses, and the costs of such rebutting testimony shall be adjudged on the final hearing.

It is also ordered that a subpœna duces tecum shall issue to William L. Pace, and his wife Elizabeth Pace, commanding them to bring before, and file with the Commissioners, the family Bible referred to, and described in complainant's affidavit, containing the names and ages of their children, as originally entered upon the first leaves of said book, and as subsequently transcribed by William J. Johnson upon the pages of said book, between the Old and New Testament.

On argument of the rule, entered on a former day of the present term, to show cause why process shall not issue to James S. Bradford, Entry Taker and Register of the Ocoee District, commanding him to bring here the original books and papers therein mentioned, his Honor is pleased to order that said rule be discharged, but that a similar rule may be again applied for, if, upon further consideration, he shall deem it proper to grant it.

November 19, 1856.

WILLIAM P. LEA
vs.
POLK COUNTY COPPER CO., and others.

For reasons disclosed by the affidavit of John Caldwell, one of the defendants, leave is given to the respondents to take testimony to show that the prosecution of this suit is tainted with champerty, but to be confined to that point; they shall take their testimony thereon, if any, within three months from this date, and then complainant shall have the next succeeding two months to take rebutting or counter testimony. But the admissibility of such testimony to prove champerty, if taken in the State in which this cause now stands, without pleadings, involving such issue, is reserved as also all questions of costs.

And upon a further affidavit of said John Caldwell, it is ordered by the court that respondents have leave to withdraw from the files an original paper marked Exhibit A, to the deposition of Elias Davis, purporting to be the proof of the original occupant claim of Luther Wallis on the land in dispute—on leaving a copy of said paper with the clerk, and that they have leave to retake the deposition of Luther Wallis, and to take the testimony of any other wit-

nesses to prove said original paper, and the assignment thereon. And it is further ordered that said deposition shall be taken within three months from this time, and that complainants be allowed the next succeeding two months to take rebutting testimony upon the same matters.

November 19, 1857.

WILLIAM P. LEA
vs.
THE POLK COUNTY COPPER CO., and others.

On motion of the defendants it is ordered that after Exhibit A to the deposition of Elias Davis shall have been withdrawn and used by defendants in taking their testimony referred to in a previous order, the complainant shall be also allowed, within the two months to which he is limited to take testimony, to withdraw said exhibit for the purpose of exhibiting the same to his witnesses to discredit said paper, on leaving a copy thereof with the clerk, and causing the original to be returned before the next term.

May Term, 1857. June 12th.

WM. P. LEA
vs.
POLK COUNTY COPPER CO'Y, THOMAS H. CALLOWAY, and others.

This day came the parties by their attorneys, and this cause came on to be heard on the bill, amended bill, and supplemental bill, with the answer thereto, and the proofs, pleadings, &c., in the cause when during the progress of the investigation came an order for adjournment.

May Term, 1857. June 13th.

WM. P. LEA
vs.
POLK COUNTY COPPER CO., THOS. H. CALLOWAY, and others.

Again came the parties by their attorneys and continued the investigation of this cause, when during the progress of the same, came an order for adjournment.

May Term, 1857. June 15th.

WM. P. LEA
vs.
POLK COUNTY COPPER COM'Y, THOS. H. CALLOWAY, and others.

Again came the parties by their attorneys and continued the investigation of this cause, when during the progress of the same came an order for adjournment.

June 16th.

WM. P. LEA
vs.
POLK COUNTY COPPER COMP'Y, THOS. H. CALLOWAY, and others.

Again came the parties by their attorneys and continued the investigation of this cause, when during the progress of the same again came an order for adjournment.

May Term, 1857. June 17th.

WM. P. LEA
vs.
POLK COUNTY COPPER CO'Y, THOS. H. CALLOWAY, and others.

Again came the parties by their attorneys and continued the investigation of this cause, when during the progress of the same, after the completion of the reading of bills, answers, and proofs, came an order for adjournment.

May Term, 1857. June 18th.

WM. P. LEA
vs.
POLK COUNTY COPPER COMP'Y, THOS. H. CALLOWAY, and others.

Again came the parties by their attorneys and continued the investigation of this cause, when during the progress of the argument of counsel came an order for adjournment.

May Term, 1857. June 19th.

WM. P. LEA
vs.
POLK COUNTY COPPER CO., THOS. H. CALLOWAY, and others.

Again came the parties by their attorneys and continued, as on previous days, the investigation of this cause, when during the progress of the argument came an order for adjournment.

May Term, 1857. June 20th.

WM. P. LEA
vs.
POLK COUNTY COPPER COMP'Y, THOS. H. CALLOWAY, and others.

Came the parties again by their attorneys and continued, as on previous days of the term, the investigation of this cause, and upon the completion of the argument of counsel, came an order for adjournment.

Decree.

CIRCUIT COURT OF THE UNITED STATES,
District of East Tennessee.

May Term, 1857.

Amended and Supplemental Bill.

WILLIAM PINCKNEY LEA, a citizen of the State of Georgia,
vs.
THE POLK COUNTY COPPER COMPANY, CHARLES BURREESE, of Duck, Tennessee; ISHAM DAVIS, MARTHA SHUFFIELD, JOHN TONKINS, CLARINDA CRUMBY and her husband, THOMAS H. CALLOWAY, EUCLID WATERHOUSE, JOHN CALDWELL, ALEXANDER H. KEITH, SAMUEL CONGDON, all of the State of Tennessee; CHARLES CONGDON, of Brooklyn, New York; JEMIMA MASTIN, widow of Thomas Mastin, JOHN J. MASTIN, SARAH A. MASTIN, SUSAN N. MASTIN, REUBEN F. MASTIN, THOMAS H. MASTIN, DAVID C. MASTIN, WILLIAM W. MASTIN, and MARTHA J. MASTIN, of the State of Tennessee; CHARLES CONGDON, LYMAN W. GILBERT, as trustees of the "MARY MINING COMPANY and MARY'S COPPER COMPANY."

This cause came on to be heard, and was on the 13th day of June, 1857, and the seven succeeding days before the Hon'l John Catron, sitting in chancery on the pleadings and proofs in said cause, when it appeared to the Court that the respondents who are properly before this Court, and are parties to the suit, are protected against the claim set up in the bill by the defences said respondents make in their answers which rely first on the fact that they were *bona fide* purchasers for valuable consideration of the lands they are sued for; and secondly, that the complainant is barred as against the respondents by the act of limitations; they and those under whom they claim having had seven years' adverse possession of the land before they were sued by virtue of a deed purporting to be in fee. The Court find the defences set up to be true.

It is therefore adjudged and decreed that the bill be, and it is, hereby dismissed with costs.

From which decision of the Court the complainant prays an appeal to the Supreme Court of the United States, to be held on the first Monday of December next, and the same is granted upon his entering into an appeal bond in the penalty of six hundred dollars, with surety, and the said bond is executed.

And the Court, on motion, orders, that in making out the record of the case the clerk omit the depositions of Elias Davis, James A. Davis, William M. Hancock, M. H. Hancock, Solomon Pickle, Presly Turner, and Josiah Lemmon, withdrawn by the defendants; and the depositions of John Woodall, William L. Pace, taken the second time, Eli Rymer, taken the third time, Jeremiah Lilliard, J. J. Bryan, R. M. Fleming, Elizabeth Pace, W. F. Ragsdale, J. H. Shock, and W.

W. Stone, withdrawn by the complainant; and that he also omit the record of the ages of the children of William L. Pace, contained in the Bible filed with the deposition of said William L. Pace; also all the letters of Albert M. Lea, complainant's agent, and the deposition of James M. Gibbs, to which one of said letters is attached.

And it is further ordered by the Court that the clerk attach to record and send up with it, besides copies thereof, the *original grant* or patent for the land in controversy, the *original deed* from William P. Lea to John Davis, the original certificate or *or* probate of the occupant claim of Luther Wallace, and the eight original grants exhibited with the deposition of Barclay McGee, and the original map of the district and map of the township.

It is ordered by the Court that the appeal bond in the foregoing case be spread upon the records of this Court, which is in the following words and figures, to wit:—

Appeal Bond.

UNITED STATES OF AMERICA,
District of East Tennessee.

(Circuit Court U. S.)

We, William P. Lea, Wm. H. Sneed, Thos. A. R. Nelson, and Return J. Meigs, acknowledge ourselves indebted to the Polk County Copper Company and others, their heirs, executors, administrators, and assigns, in the sum of six hundred dollars, jointly and severally, but to be void if the said William Pinckney Lea shall well and truly prosecute with effect an appeal which he has this day prayed and obtained to the Supreme Court of the United States, to be held on the first Monday of December next, at the City of Washington, from a decree pronounced by the Court of the United States, at Knoxville, in the case of William P. Lea against Polk County Copper Company and others, or in case of failure therein shall pay all costs adjudged against him by said Supreme Court.

Witness our hands and seals this 23d day of June, 1857.

W. P. LEA,	[SEAL.]
W. H. SNEED,	[SEAL.]
R. J. MEIGS,	[SEAL.]
THOS. A. R. NELSON.	[SEAL.]

Attest, N. GAMMON, *Cl'k.*

Approved 23d June, 1857.

WILLIAM PINCKNEY LEA
vs.
POLK COUNTY COPPER COMPANY, THOS. H. CALLOWAY, AND OTHERS.

June 24th, 1857.

It is ordered that the parties to this cause be allowed to arrange their pleadings and proofs so as to correspond as well as may be to

the different questions involved in the controversy, and that the clerk of this Court copy said pleadings and proofs in the order they are classed and arranged by the parties respectively, in his transcript intended to be sent up to the Supreme Court.

Court adjourned until Court in course. J. CATRON.

I, Nathan Gammon, Clerk of the Circuit Court of the United States for the District of East Tennessee, do hereby certify that the foregoing is a true and perfect transcript of the record in the case of William Pinckney Lea against Polk County Copper Company, Thomas H. Calloway and others, except so much thereof as were, upon motion of the parties, permitted by the Court to be withdrawn, and such other matter as was ordered by the Court to be omitted in transcript, embracing the bills and answers and exhibits thereto, depositions and exhibits thereto, copies of grants, &c. &c.; the captions preceding depo's and certificates of commissioners, in most cases, being omitted in said transcript.

Given under my hand and seal of office at Knoxville, this 15th day of November, 1857. NATHAN GAMMON,

[SEAL.] *Clk. U. S. C. C.*

Certificate of James Bradford.

(Map of Ocoee District, see original, p. 329.)

ENTRY TAKER AND REGISTER'S OFFICE,
Ocoee District, September 8, 1856.

I, James S. Bradford, Register, &c., do certify that I have compared a copy of the map of the Ocoee District, with the original now in my office, the said being identified by my signature being endorsed on its face—and that I find said copy to be correct in its general outlines. Some of the creeks are not named in the original map, which are named in the copy. Silco Creek in the copy was marked as in range 4 east. As it is in range 3 E., I have erased the name in range 4 east, and placed it where it should be, in range 3 east.

JAMES S. BRADFORD,
Register of the Ocoee District.

Filed in my office by compln't, Wm. P. Lea, Oct. 11, 1856.

N. GAMMON,
Clk C. C. U. S.

Copy of the "Original Grant or Patent for the Land in dispute."

THE STATE OF TENNESSEE. No. 5744.

To all to whom these presents shall come, greeting: Know ye, that in consideration of an entry made in the Entry Taker's Office of the Ocoee District, of No. 5446, date the fifth day of April, 1842, by William Park Lea, as general enterer. There is granted by the said State of Tennessee, to the said William Park Lea and his heirs, a certain tract or parcel of land containing eighty acres, lying in the

County of Polk in the said District, situate in the fifth range east of the basis line, fourth fractional township south, and fifteenth section, being the east half of the southwest quarter of said section; beginning at the southwest corner of said quarter, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said William Park Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 21st day of August in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the Governor, JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

William Park Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

(Copy of indorsement on back of same.)
Recorded 18th November, 1842.

J. C. TIPTON, *R. O. D.*

Filed in my office by Thomas H. Calloway, 9 o'clock, Nov. 28th, 1854.

D. H. CUMMINGS,
Cl'k of U. S. Circuit Court.

(And also indorsed as follows:)—
(Filed in my office by respondents, Nov. 10, 1856.)

N. GAMMON,
Cl'k C. C. U. S.

(And also indorsed):
"Grant 5744. Wm. P. Lea." 80 A.

(Copy.)
(*Original Deed.*)

STATE OF TENNESSEE,
Bradley County.

This indenture, made this the 18th day of June in the year of our Lord one thousand eight hundred and forty-six, between William P. Lea, of the County of Bradley and State of Tennessee, of the one part, and John Davis, of the County of Polk and State of Tennessee of the other part—

Witnesseth, that the said William P. Lea, for and in consideration of the sum of fifty dollars to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed, and confirmed, and by these doth grant, bargain, sell, alien, convey, and confirm unto the said John Davis and his assigns forever, certain tracts or parcels of land, described on the general plan of the Ocoee District, as containing one hundred and

sixty acres of land more or less, and also, as being the east half of the southwest quarter of section fifteen, in fractional township four south, and range five east; and also the east half of the northwest quarter of section twenty-two, in the same range and township, and all and singular the appurtenances thereto belonging, or in anywise appertaining, to the said John Davis, his heirs and assigns. I further covenant and bind myself, heirs and representatives, to warrant and forever defend the title to said lands against the lawful claims of all persons whatsoever.

Witness my hand and seal, this the 18th day of June, 1846.

WILLIAM P. LEA. [SEAL.]

Witness:

ELIAS DAVIS,

YOUNG DAVIS, sworn to.

STATE OF TENNESSEE,
Bradley County.

Personally appeared before me, John H. Robertson, Clerk of the County Court for the County of Bradley aforesaid, Young Davis, one of the within named witness, who, after being duly sworn, depose and say he is acquainted with William P. Lea, the bargainer named in the foregoing deed, who, in his presence, acknowledged the execution of the same on the day it bears date for the purposes therein mentioned.

Witness my hand at office, December 17th, 1852.

JOHN H. ROBERTSON, *Cl'k.*

STATE OF TENNESSEE,
Polk County.

Personally appeared before me, Emmons P. Douglas, Clerk of the County Court for Polk County, Elias Davis, one of the subscribing witnesses to the within deed of conveyance, who, after being duly sworn by me, depose and says he was acquainted with William P. Lea, the bargainor, that he acknowledged the due execution of the same to be his act and deed, and for the purposes therein contained.

Witness my hand at office *office* in Benton, January 28th, 1853.

E. P. DOUGLAS, *Clerk.*

STATE OF TENNESSEE,
Polk County.

Jan'y 28th, 1853, 12 o'clock M.

Then was the foregoing deed of conveyance, together with the clerk's certificate, noted in Note Book A, page 102, registered in my office in Benton, in Book D, pages 522—223.

ROBERT N. FLEMING, *Register.*

Reg. fee $1.00.

(Indorsed on the back as follows):—

"Exhibit O, proved by the deposition of John C. Gant.

August 28, 1855. J. H. PAYNE, *Com'r.*

Called Original Certificate or Probate of the Occupant Claim of Luther Wallis.

STATE OF TENNESSEE,
Polk County.

"Personly came before me, John Davis, an acting Justis of the peas for said countey, Yong Davis and Matilda Davis, boath pecible citizens, and after beaing dewly sworn saith on oath that tha are well acquainted with luther wallis and the southwest quarter of the fifteenth section township 4 range 5 east of the bases line, and that the said lewther wallis was residing thare on at and before the pasedg of the act this 25 feb. 1842.

L. WALIS,
YOUNG DAVIS,
MATILD DAVIS."
JOHN DAVIS, *J. P.*

"For value recied i asign over all my right title and claim to John Davis this 25 febuary 1842.

test L. WALIS."
"YOUNG DAVIS."

(The above is indorsed on its back as follows:)

("Exhibit A to the deposition of Elias Davis.")
Also ("Exhibit B " " John F. Hannah.")

BENJAMIN MANN, *Com.*

Order to "Enlarge" the Time for taking Testimony.

Nashville, February 8th, 1856.

The time for taking in the case of Lea vs. Polk C'ty Copper Co. is hereby enlarged, and each party is allowed to take testimony generally in the case till the five days next immediately preceding the first day of the Court.

The clerk of the Circuit Court is hereby ordered to give both parties notice of this order at the earliest practicable moment.

W. H. HUMPHREYS, *U. S. District J.*

(Granted on application of Resp'd'ts.)

Affidavit and Application for Extension of time to take Testimony.

STATE OF TENNESSEE,
Knox County.

Office of the Clerk of the Circuit Court of the United States for the Eighth Judicial Circuit Court, Knoxville.

This day personally appeared before me, N. Gammon, clerk of said court, Thomas H. Calloway, one of the defendants in the case of William P. Lea vs. the Polk County Copper Company and others, and made oath in due form of law that recently, and after the time limited for taking testimony by the rule of the court had expired, he

has discovered certain grants to lands lying in Polk County, which were issued to the complainants, and which are admitted by the respondents to cover lands actually entered by the complainant. These grants bear on their face evidence of having been altered since they were issued, thereby confirming most strongly the testimony of the former register of the Ocoee District and the defence set up in the answer that the grant in the case under consideration and these others now referred to were altered by the register himself and with the assent or agreement of the parties then claiming those lands. This testimony is deemed material by respondents, wherefore they pray of the Hon. Judge of the said court to enlarge the time for taking testimony in this case, so as to allow them to take the deposition of Barkley McGhee, in whose custody said grants now are and have been for several years past.

THOS. H. CALLOWAY.

Sworn and subscribed before me, January 22, 1856.

N. GAMMON, *Cl'k.*

Order of 22d Aug., 1856, *extending the Time for taking "Further Proofs" to Oct.* 1, 1856.

In the cause in equity pending in the Circuit Court of the United States for the district of East Tennessee, at Knoxville, of William P. Lea, compl't, against Polk County Copper Company, Thos. H. Calloway, and others.

It is ordered that the order made on the 16th day of April, 1856, in the cause aforesaid, extending the time to take further proofs therein four months, is hereby further extended to the first day of October next (said day being excluded).

Provided, That this order shall not prejudice the respondents in bringing said cause to a speedy hearing, nor in any other respect.

Given under my hand at Tullahema, Tenn., this 22d day of August, A. D. 1856.

JNO. CATRON,

Asso. Jus. S. C. U. S. and Presiding Judge at the Court aforesaid.

(Granted upon application of compl't. Affidavit and application not in the files.)

Order extending the Time for taking Depositions (*dated* "23*d day of September*, 1856") *to Oct.* 13, 1856, *inclusive.*

WM. P. LEA
vs.
THOS. H. CALLOWAY and others.

Order.

"To the Clerk of the Circuit Court of the United States for the District of E. Tennessee:—

In the cause in equity pending, at Knoxville, in the Circuit Court of the United States for the District of East Tennessee, between

Wm. P. Lea, compl't, and Thos. H. Calloway and others, respondents, it is ordered, that the time for taking depositions in said cause be extended to both parties to the thirteenth day of October next, the said 13th day of October to be included.

The depositions to be taken on such notice, and in the manner prescribed by the order of Court, made in that behalf at its last term.

Ordered furthermore, that the petition accompanying this order be filed with the clerk of said Circuit Court.

Given under my hand, at Nashville, this 25th day of September, 1856.

JNO. CATRON,
Asso. Jus. S. C. U. S.

(Granted upon application of T. H. Calloway, one of d'f'ts.)

Affidavit of Thos. H. Calloway. Application for Extension of Time to take Testimony.

WILLIAM P. LEA
vs.
THOMAS H. CALLOWAY and others.

Pendency in Circuit Court of United States for the District of East Tennessee, at Knoxville.

In this cause, the affidavit Thomas H. Calloway, one of the defendants in the same, makes oath, that at the last term of this hon. court, the complainant continued the cause, and four months was given to complete the testimony in; that he, complainant, suffered said time to nearly expire before serving any notices to take depositions, and that had his depositions been taken according to his notices, respondents would not have had time to give notice and take rebutting proof before the four months would have closed. Affidavit further states, that on application to the Hon. Judge Catron, the time of taking proof, on complainant's application, was extended to the 1st day of October, 1856. Under this order, complainant has had various notices served on respondents for the taking of proof at different points, commencing on the 10th September, 1856, as respondent recollects, and the last notice being on the 29th, as he remembers. At the taking of depositions at Chattanooga, on the 15th or 16th of this month, complainant had witnesses who testified, as respondent is informed and believes, that John Davis, one of the persons through whose title respondents claim title to the land in dispute, did not have the possession of *of* the same, at or for the time insisted on in the answers—that is, for the period of seven years, so as to make the statute of limitations effectual. This testimony has taken respondents by surprise, and proved or sworn to by men residents of Georgia, as he is informed. Respondent does verily believe said testimony is untrue, and can be so proved by undoubted testimony.

And respondent is constrained to believe it was taken at a day so

late as it was, in order to force respondents to ask for a continuance of the course to take rebutting proof. The premises considered, the respondents pray the Hon. Judges, Catron or Humphreys, to prolong the time for the taking of proofs until Saturday, the 13th of October, and to include said 13th day. Affiavit hopes, though the the time will be that, to have such testimony as will save them from the necessity of an appliance for a continuance. This application is made for the attainment of justice, and no other purpose.

THOS. H. CALLOWAY.

Sworn to and subscribed before me, this 23d Sept., 1856.

JOHN C. GANT,

Judge of the 3d Judicial Circuit in the State of Tennessee.

Order for extension of time for taking testimony. 1856.

W. P. LEA
vs.
P. COUNTY C. C. and others.

Nashville, October.

The time for taking testimony in this case, is extended to the day of the commencement of the adjourned term of the Circuit Court of U. S., at Knoxville.

The privilege is extended to both complainant and defendants.

W. H. HUMPHREYS, *U. S. D. Judge.*

The clerk will please notify the parties of this order.

W. H. HUMPHREYS.

☞ (Granted upon application of Jno. Caldwell, one of the defendants.

John Caldwell's affidavit and application for extension of time to take testimony.

WILLIAM P. LEA
vs.
POLK COUNTY COPPER COMPANY, THOS. H. CALLOWAY and others.

Pending in equity in the Circuit Court of the United States, for the District of East Tennessee, at Knoxville.

John Caldwell, one of the defendants in the above cause, makes oath, that under the order of the Hon'l John Catron, Judge, &c., extending the time of taking proof in this cause to the 13th October, 1856, the respondents had hoped and believed that they would have been able to have closed this proof on the 13th of this month, but owing to the non-attendance of witnesses, they have not been able to prove the execution of certain written papers, with the concurrence of the complainant in this cause, as they believe, which papers, respondents verily believe when established, will tend to show, if not establish, that complainant's case is being attempted to be made out on fabricated testimony. Respondents are advised that it is material

they should have an opportunity of verifying said papers, and without such verification, an important link in their testimony, bearing on the whole weight of complainants, will be wanting. Respondents will further state that no diligence would have availed them, for so secret was the existence of these papers kept, that the existence of some of them has not come to respondents' knowledge until the last few days, and others of them within a time so short as that they have been unable to have witnesses in attendance to verify them.

Respondents also state, as they stated in the application to extend the time for taking proof alluded to, that the attempt to evade the force of the statute of limitations of seven *of seven* years, relied on as one of the defences in their answer to complainant's recovery of the land sued for, took respondent wholly by surprise, as the full, complete, adverse, and continual possession of those under whom respondents' defence title, adverse to all others, is susceptible of proof, strong, clear, and indubitable, respondents believed this was well known to complainant, and respondents, having taking the testimony of several witnesses to make out their defence, were perfectly astonished that complainant, about the time for taking proofs had expired, should have introduced witness, of the doubtful character he did, to use no stronger expression, to disprove a fact, known to all who knew anything about it, to be different to what those witnesses testified to respondents owing to the shortness of the time, being only four days for taking testimony, after the giving of the notice, have been unable to introduce all their rebutting proof on this point.

The premises considered, therefore respondents pray, that the *the* hon'l the Judges of said Court, or one of them, will extend the time of taking proof, until the 7th November, 1856, or such other term as to their honors may seem correct and proper,

JOHN CALDWELL.

Sworn to and subscribed before me, this 14th October, 1856.

JOHN C. GANT.

Judge of the 3d Judicial Circuit of the State of Tennessee.

(Copy.)

Grant No. 6605.

THE STATE OF TENNESSEE.

To all whom these presents shall come, greeting: Know ye, that in consideration of an entry, made in the Entry Taker's office of the Ocoee District, of No. 8739, dated the 18th day of October, 1842, by Francis W. Lea as General Enterer, the certified copy being assigned to William P. Lea, there is granted by the said State of Tennessee, to the said Wm. P. Lea and his heirs, a certain tract or parcel of land containing 80 acres, lying in the county of Polk in the said District, situate in the 5th range east of the basis line, the fourth fractional township, and 15 section, being the east half of the southwest quarter of said section :—— Beginning at the southeast corner of said quarter, with its appurtenances, to have and to hold

the said tract or parcel of land, with its appurtenances, to the said Park Lea and his heirs forever.

In witness whereof, Wm. Trousdale, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 1st day of August, in the year of our Lord one thousand eight hundred and 48, and of American Independence the third.

By the Governor.

(Signed) WM. TROUSDALE.

(Signed) WM. B. A. RAMSEY, *Secretary.*

Wm. Park Lea hath title to the above described land.

(Signed) FRAN. W. LEA, *Register of the Ocoee District.*

Recorded 20 September, 1849.

(Indorsed as follows.)

Entry Taker's and Register's office, Ocoee District, Oct. 10, 1856.

I certify the within to be a true copy from the records of my office book L. JAMES S. BRADFORD,

Register, &c., of the Ocoee District.

Deposition of James Calvin Maples.

WM. PINCKNEY LEA

vs.

POLK COUNTY COPPER COMPANY, THOMAS H. CALLOWAY and others, at Knoxville.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the District of East Tennessee.

Interrogatories to be propounded to James Calvin Maples, of Jacksonville, Cherokee County, State of Texas, on the part of the plaintiff in this cause.

Int. 1. What is your age?

Int. 2. If you are acquainted with complainant, state when, where, and under what circumstances you became acquainted with him.

Int. 3. Where did you reside in the year 1842, and how far from the "Savannah farm" (or "Hiwassee old town") on Hiwassee River, in Polk County, Tennessee?

Int. 4. If you kept cattle in the mountain range in the years 1842, 1843 and 1844, state whether you kept them in company with those of any other person, naming them, stating particularly *where* you kept them in each year, and if on the south side of the Hiwassee River in either year, and crossed the river with them in order to take them to the range, state at what time, who went with you, where you intended to take them, where you left them, whom you engaged as herdsman, how many cattle you had, and why you took them to that particular place; did the cattle remain in the range; if not, why; was any agreement made between you and complainant

to obviate this cause; and, if any, what; and how was it carried out, and its results?

Int. 5. What is the general character of complainant, especially as to whether he is covetous and grasping, or otherwise?

Int. 6. If any land was entered in consequence of any agreement between yourself and complainant, for what was it considered valuable; was it designed as an appendage to Savannah farm; how far was it from the then residence of complainant on said farm, and who paid for it, and how much was so entered; state fully your information and understanding on these points at that time?

Int. 7. Do you know or can you set forth any other matter or thing which may be a benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

NEILSON, MEIGS & SNEED,
Solicitors for Cmplainant.

Cross-interrogatories to be answered by James Calvin Maples, submitted by Defendants.

Cross-interrogatory 1. Please state in whose employment was the complainant in the year 1842, 1843 and 1844? On whose farm did he live, and whose were the cattle he was employed in herding in these years?

2d. If you made any entries or purchases of land in connection with the complainant in those years, please state when they were located, and describe them as particularly as you can, giving also the date of entry or purchase as near as you can?

ROWLES, LYON & COOKE,
Sol'c't for Resp'ts.

JACKSONVILLE, Cherokee County, Texas,
October 17th, 1855.

THE STATE OF TEXAS,
County of Cherokee.

WILLIAM PINCKNEY LEA
vs.
POLK COUNTY COPPER COMPANY, THOMAS H. CALLOWAY and others.

Answer to interrogatories propounded to James Calvin Maples this day by the undersigned authority. Ans. to wit, No.

1st. My age is thirty-five years, and my occupation a merchant.

Answer to wit, 2d. I became acquainted complainant about the year eighteen hundred and forty in Polk County, Tenn., and I became more intimately acquainted with him in the year eighteen hundred and forty-one, as we kept cattle in the range together in the county and State aforesaid. Ans. to wit:

3. I resided in 1842 at my father's, in McMinn County and State aforesaid, about six miles from the Savannah, or Hiwassee old town.

Ans. to Int. 4. I kept cattle in the mountain range in the years 1842, 1843 and 1844. The 1842 William Pinckney Lea and James and Thomas Gilbreath kept their cattle with mine. 1843 William Pinckney Lea kept cattle with me in the mountain range. I am not positive whether the Gilbreaths kept their cattle with us in the year 1843 or not. In the years 1842 and 1843 we kept them on the south side of the Hiwassee River. We drove our cattle from the Savannah farm and from my father's farm across the Hiwassee River, crossing the river near or at the broad shoals, travelling in the direction of Ducktown. In the years 1842 and 1843 my stock, W. P. Lea's were drove together both years. But I do not recollect who was along with me at the time of driving to the range. We left them in a few miles of Ducktown in the care of William Watkins, and he had charge of them as herdsman both the years 1842 and 1843. I had about fifty head of cattle, and Lea about the same amount. We took them into the neighborhood of Ducktown because the range was better there than nearer home. The cattle remained in the range a short time, and left without any agency of ours, contrary to our wishes. From the best information we could get, the cattle was run out of the range. There was an agreement made between William Pinckney Lea and myself that he was to secure some lands in the mountains in the Ducktown range for the benefit of our stock. He left, stating that he would go to Cleveland and secure some land for our benefit. On his return he said he had secured some land in the mountains for the benefit of our stock in the Ducktown range. After our cattle were driven out of the range in short time we drove them back, and they were never molested any more, and I remained quiet in the range.

Ans. to Int. 5. The general character of William Pinckney is that of an honest man, good morals, but a close trader.

Ans. to 6 Int. I have stated in interrogatory 4th all I know about the entering or securing the land as agreed upon between us. We considered valuable only on account of the range. It was not considered an appendage to the Savannah farm. The place where we salted our cattle and kept them was from 12 to 20 miles from where William Pinckney Lea (complainant) resided at the time on said farm. I do not how much land was entered, nor do I know who paid for it. I never was called on to pay any part of it.

Ans. to Int. 7. I have stated all in the foregoing interrogatories that I believe to be material to either party.

Cross-interrogatories.

Ans. 1st to Cross-int. William Pinckney Lea was in the employment of his brother, Caswell Lea, in the years 1842, 1843 and 1844, and lived on the farm of said Caswell Lea in the years above stated, and the cattle he kept in the range with me belonged to Caswell Lea.

Ans. 2d to Cross-int. In the year 1842 and 1843 William Pinckney Lea and myself had cattle in the range together near Ducktown,

and he said he would go to Cleveland and secure us some land for the benefit of the range. He left me, and on his return said he had secured the land for the benefit of our stock. Did not say whether in his own name alone, or his name and mine jointly. I was not called on to pay any part of the money. Never learned the No. of the lot purchased. I consequently consider I was not a party in the purchase. JAMES CALVIN MAPLES.

THE STATE OF TEXAS,
County of Cherokee.

I do hereby certify that the above answers to the interrogatories were taken by me on the day and year above written, in the handwriting of witness, and sworn to and subscribed before me on the day and year above written.

Given under my hand and seal.

E. B. RAGSDALE, *Commissioner.*

Deposition of Jno. Hoyle, Jr., for Compl'nt. Dec'r, 1855.

John Hoyle, Jr., aged about 45 years, being next introduced and sworn, deposes and says:—

1st. Interrogatory by complainant's agent. Please to state when your daughter Susan Catharine was born, and if you have a record of that event.

Answer. My daughter is about 15 years old; and I have a record of that event.

2d. Int. by same. If you have at any time heard either of the respondents speak of any defect or flaw in their title to the land in dispute, please to say when, by whom, and what was said.

Ans. I never did.

And further this deponent saith not. JOHN HOYLE, JR.

Deposition of Mrs. R. S. Crew.

Mrs. R. S. Crew, aged about forty-three years, being next duly sworn, deposes and says:—

Ques. 1st by complainant's solicitor. Please state whether or not you are the widow of Pleasant Crew, deceased.

Answer. I am.

Ques. 2d. Please state whether you lived on Stav's Mountain, in McMinn County, Tenn., during the lifetime of Pleasant Crew, dec'd, and if so, state, as near as you can, what time you went there, and when you left there.

Answer. I did, and cannot tell how long since, but, according to my best recollection, it was about fifteen or sixteen years ago; we lived there during the summer, and moved down in the winter; the exact time I cannot remember; but taking time to examine the records of my family, I find my eldest son now living was born in the year eighteen hundred and thirty-nine; the next year following, I went to the mountain, on account of my child's bad health, and

remained there several weeks; after that, my husband built, and we removed to the mountain the year following.

Ques. 3d. State whether or not a man named James Jackson lived with you when you resided on the mountain, in the house built there by your husband; and if so, tell, as nigh as you can, how long he was with you, and what part of the time he was there with you?

Answer. I know there was a man by the name of Jackson lived with us on the mountain, but at what particular time, nor how long he stayed, I do not remember.

Ques. 4th. Please state, if you can, whether the said Jackson lived with you during the first time you were on the mountain for a few weeks with your sick son, or was it during the time you lived there in the house built by your husband?

Answer. It was after we moved into the house my husband built.

Quest. 5. Please state what month in the year 1839 your said son was born.

Answer. He was born on the 6th day of November in the year 1839.

Cross-examination.

Question. Was it the next year ensuing the one in which you stayed a short time on the mountain that your husband built?

Answer. It was on the following winter and during the next year; and further this deponent saith not. P. S. CREW.

Deposition of James Jackson. Dec'r 21, 1855.

James Jackson, aged about 45 years, being next duly sworn according to law, on behalf of complainant, deposeth and saith as follows:—

1st Int. by complainant's agent. Please to state where you lived in the year 1842, giving any circumstances by which you can determine that date.

Ans. I lived with Wm. Watkins, at a place near where he now lives. I do not know much about the date of the year. I am not scholar enough to give the date of the year correctly.

2d Int. by same. Did you live at John Hoyle, Junior, at the time his daughter Susan Catharine was born?

Ans. I did.

3d Int. by same. Did you remove from John Hoyle's to Pleasant Crew's, and if aye, state whether you so removed during the summer after the birth of his daughter Susan Catharine?

Ans. I did remove to Pleasant Crew's. It was about this time in the year.

4th Int. by same. Did you leave John Hoyle's to go to Crew's the next winter following the birth of his daughter, Susan Catharine?

Ans. I did.

5th Int. by same. How long did you live at Crew's?

Ans. Till the August following.

6th Int. by same. Where did you remove from Crew's?

Ans. To Mr. Watkins, and resided there several years.

7th Int. by same. Is Mr. Watkins your father in law?

Ans. He is.

8th Int. by same. State whether Wm. Watkins ever herded cattle in the mountains between his residence and *and* Ducktown; and if aye, whose cattle he herded there.

Ans. He herded cattle there for Thos. Galbreath and Cannon.

9th Int. by same. Did Watkins herd the cattle of Gilbreath and Cannon in the mountains near his house, and when?

Ans. He did. It was the year that I moved there.

10th Int. by same. Do you know whether Watkins kept cattle in the range for any other person the next year after he kept those of Gilbreath and Cannon, and if aye, state whose cattle, and where did they range.

Ans. Not in the same range. He kept cattle the next year for William P. Lea and Maples; they ranged in the Ducktown regions.

11th Int. by same. Did you ever see the cattle of Lea and Maples in the range when kept by Watkins? if aye, state whether you have ever seen them on or east of the mountain from the top of which you can see the settlements in Ducktown.

Ans. I did see them in the range; I saw them on the north side of the mountain, this way from which you can see the settlements in Ducktown.

12th Int. by same. Do you know whether Lea's & Maples' cattle ever ranged over the mountain next to Ducktown, and on the waters of Brush Creek?

Ans. I do not know of my own knowledge.

13th Int. by same. Have you ever been at the cabin built by Watkins as a shelter whilst herding Lea's & Maples' cattle?

Ans. I have.

14th Int. by same. How far from the Watkin's cabin, where he kept the cattle, to the top of the mountains overlooking Ducktown?

Ans. I cannot tell.

15th Int. by same. Do you know anything of the cattle of Lea & Maples being run out of the range whilst herded by Watkins? if aye, state by whom, how, and when.

Ans. They were run out the same spring, they were taken in there by tying a bearskin on one in Ducktown.

16th Int. by same. At what time in the year were the cattle of Lea and Maples taken to the range at the cabin?

Ans. It was in March.

17th Int. by same. At what time were they run out of the range?

Ans. I don't know exactly what time. It was in March though.

18th Int. by same. If you were sent by Watkins to inform Lea and Maples about their cattle being run out of the range, please to state what message you carried from Watkins to them.

Ans. Mr. Watkins sent me to Lea and Maples to tell them they were run out, and to come and attend to them.

19th Int. by same. Did you tell Lea and Maples who had run out the cattle?

Ans. I told them it was done by Davises and Witt, Wm. R. Witt; they lived Ducktown.

20th Int. by same. Who informed you that the cattle were run out of the range by the Davises and Witt?

Ans. Mr. Watkins.

Respondents except to the above answer, because it introduces the declaration of Mr. Watkins. J. B. COOKE, *Sol.*

21st Int. by same. Did Lea and Maples go up to the mountains to see about their cattle after you brought them the message?

Ans. No, sir, they did not go there, they came in a few days afterwards.

22d Int. by same. What did Lea and Maples, or either of them, do about their cattle after they were run out?

Ans. They went to Cleveland and entered land, they said, and told me and Mr. Watkins to go ahead and keep the cattle, and if any one run them out they would have to abide by the law.

Resp'ts by their sol. except to the above question and answer, because they seek to introduce the declarations of Maples, which is mere hearsay evidence, and to make the declarations of complainant evidence for himself. J. B. COOKE, *Sol.*

18th Int. by same. Did you understand that the land referred to in your last answer was entered in the name of William P. Lea, or of Lea and Maples together?

Ans. My understanding from them was that it was entered in their name, Wm. P. Lea, and Maples, that is what I understood from them when they came back.

19th Int. by same. Were did you understand that the land entered by them lay, and how much?

Ans. The way they told it to me, it lay in the Ducktown regions; they never told me how much they entered.

Resp'ts by their sol. except to the last question and answer, for the same causes assigned in their last exception.

J. B. COOKE, *Sol.*

20th Int. by same. Did Lea and Maples bring their cattle back to the range after they said they had entered land in the Ducktown regions, and did the cattle remain there undisturbed after that time.

Ans. They did, and they were never disturbed any more after that time.

Cross-examination by Resp'ts' Sol.

Question 1st. By what means are you enabled to recollect that it was in the year 1842, that Watkins kept cattle for Lea and Maples?

Ans. I did not say anything about the date of the year that I recollect of; I said I was not *schollar* enough to tell the date of the year.

2d by same. How high was the grass when Lea and Maples first brought their cattle to Watkins?

Ans. I judge it was up about an inch and a half high out in the Crooked Mountain, it was not up so that anything could live about Watk*inses;* the was feeding his own cattle at that time; they could make out to live by feeding on the carse on the branches.

3d by same. What was Watkins feeding his cattle on?

Ans. He was feeding on shucks and some straw, and such like, and some corn, when he had it.

4th by same. Did Watkins take his own cattle out to the camp along with Lea's and Maples'?

Ans. No, sir; he let his own stay at home.

5th by same. How long was it after they were taken into the range, until they were run out by the bearskin?

Ans. It was but a short time. I do not recollect the number of days or weeks.

6th by same. Was it as much as two weeks?

Ans. I don't know.

7th by same. Where did they run to when they were run out?

Ans. They were scattered all about and through the mountains everywhere; I think there were a few that they never got at all.

8th by same. How long was it after they were run out until Watkins sent you to tell Lea and Maples about it?

Ans. It was not very long, but a few days as well as I can recollect.

9 by same. How are you enabled to recollect that it was in March that they were first carried out into the range?

Ans. I just know it was in March, but I cannot tell just at what time in March.

10 by same. How are you enabled to recollect that it was in March when they were run out of the range, if you do not recollect what time in the month they were first carried out into the range, how long they staid until they were run out, or how long it was after that until you went to tell Lea and Maples about it?

Ans. I know it was in March, but what day of the month or week I cannot recollect.

11 by same. Can you not tell why you know it was in March?

Ans. No, sir; not to be exact, I can't.

12 by . Did Lea and Maples go out into the mountains to hunt up their cattle when you told them about their being run out?

Ans. They came to hunt them in a few days after I told them about it.

13 by same. Was it at the time they came to hunt them up, that they told you they had entered land, or was it after that?

Ans. It was at the time they came to hunt the cattle.

14th by same. Who came out to Watkins with the cattle the time they were first brought out?

Ans. Mr. Lea and Mr. Maples.

15th by same. Who came with the cattle the second time they were brought?

Ans. Mr. Lea, as well as I recollect.

16th by same. Was Mr. Maples along?

Ans. I do not recollect.

17 by same. How long was it after the cattle were run out until you heard the report of who did it?

Ans. I don't recollect how long, but it was a short time.

18 by same. Do you know what constitutes the boundary of Ducktown, or the Ducktown County?

Ans. I do not.

19 by same. How far were the cattle from Watkins' camp when you saw them on the north side of the mountain spoken of by you in your answer to compl't's question?

Ans. I do not know the distance they were from the camp.

20 by same. Was it before or after they were run out of the range that you saw them there?

Ans. *I* was before.

21 by same. Did you go out to the camp with the cattle when they were first taken out?

Ans. I do not recollect exactly whether I did or not; I went to pilot Lea and Maples out one time, but I don't think it was the first time.

22 by same. How long was it after the cattle were first taken out until you went out to the camp where they were kept?

Ans. In the course of a week.

23 by same. Was it the first time you went out that you saw them on the side of the mountain?

Ans. It was.

24 by same. How long after you saw them there until they were run out?

Ans. It was not very long, I suppose some four or five days.

25 by same. Where was you when Lea and Maples came out to hunt up the cattle?

Ans. I was at Mr. Watkins'.

26 by same. Was Watkins at home?

Ans. He was not.

Re-examination.

1st Int'y by same. Are you not mistaken in stating that you did not go out to the camp with Lea and Maples when they first took out their cattle; if you did not, who did pilot them from Watkins' house to the camp?

Ans. I did not go; Mr. Watkins went with them.

2d Int. by same. Did you not take out to the camp some yearlings

that gave out by the way; and if so, was that the first time you went to the camp after the cattle were there?

Ans. I took out some yearlings that gave out, and it was the first time I was there after the cattle were there.

3d Int. by same. When you went down to tell Lea and Maples about the cattle being run out, what message did you carry back to Watkins from them?

Ans. They told me to tell Mr. Watkins they would be up in a few days.

4th Int. by same. State whether the time you meant to tell Lea and Maples about their cattle being run out of the range was before the price of the lands in the Ocoee District fell to one cent per acre?

Ans. It was before.

5th Int. by same. State any circumstance by which you knew that the lands had not fallen to one cent per acre at the time you went to see Lea and Maples.

Ans. I cannot state.

6th Int. by same. Did not Wm. P. Lea or Maples, or both, tell you to say to Watkins that they would be up in a few days as soon as the lands should fall to one cent per acre, when they would go to Cleveland and enter lands?

Ans. They told me to tell Watkins as soon as they went to Cleveland they would let him know.

Resp'ts by their sol. except to the last question and answer because the question is leading and suggestive of the answer, and because it seeks to introduce the declarations of said Maples which are mere hearsay, and to make those of compl't evidence for himself.

J. B. COOKE, *Sol.*

7th Int. by same. State what was said to you by Wm. P. Lea, the complainant, at the time you went to tell him about the cattle, about his design to enter lands as a protection to his cattle, if anything was so said.

Ans. I don't know that I can state anything more about this case.

8th Int. by same. Did not the complainant, Wm. P. Lea, say to you that he would not take his cattle back to the range immediately, but would wait until he could enter some lands; and as the price of lands would fall to one cent in a few days, he would let the cattle alone till then?

Ans. Yes, sir, he did.

Resp'ts by their sol. except to the above question and answer because the question is directly leading and indicates the answer sought, and because it seeks to introduce the statements of compl't as evidence for himself.

J. B. COOKE, *Sol.*

Re-cross-examination by Resp'ts' Sol.

Quest. 1. How long was it before the land in the Ocoee District fell to one cent per acre? Was it that you went down to tell Lea and Maples about the cattle being run out of the mountains?

Ans. I was in a few days after; I cannot tell exactly how long.

2d by same. Do you know at what time the land did fall to one cent.

Ans. I don't exactly; and further this deponent saith not.

his
JAMES + JACKSON.
mark.

Deposition of William Watkins.

Decr. 31, 1855.

William Watkins, aged about 59 years, a witness on behalf of complainant, being next duly sworn, deposeth and saith as follows:—

1st Interrogatory by complainant's agent. Please to state any circumstances by which you can fix the date when you herded cattle for the complainants Wm. P. Lea and J. C. Maples in the range.

Ans. I cannot fix it any other circumstance than that I know I kept the cattle the year after James Jackson moved from Crew's to my house in August.

2d Int. by same. Where did James Jackson live the year before he lived at Crew's.

Ans. He lived with John Hoyle, Jr.

3d Int. by same. When you kept cattle at your cabin near Rock Creek, was there carse and winter grass along the branches and banks of the river, near and above the cabin, upon which cattle might live in the absence of the summer grass?

Ans. A part of the winter they could, they could live until February.

Cross-examination by Resp'ts' Sol.

Question 1st. Please to state at what time in the spring the cattle were brought to your house by Lea and Maples.

Ans. I don't know.

2d by same. How long had they been there before they were run out by the bear-skin?

Ans. I do not know the time; it was some time in the summer or spring, they were said to be run out by a bear-skin.

3d by same. State whether, according to the best of your recollection, they had been there a month before they were run out.

Ans. I can't tell.

4th by same. State whether the grass was up so as to afford good range before they were run out.

Ans I do not recollect. It was not so at the time they were taken to the range.

And further deponent saith not.

his
WILLIAM + WATKINS.
mark.

Anderson Parker, aged about fifty-nine years, being duly sworn on the "*Wholy*" Evangelist of Almighty God, deposeth and saith as follows:—

1st Interrogatory by complainant's agent. Are you acquainted with the parties to this suit?

Answer. I am acquainted with Wm. P. Lea, as to the others I am not. I know John Caldwell and Euclid Waterhouse by sight.

2d Int. by same. Are you acquainted with the land in dispute?

Answer. I am not.

3d Int. by same. If you are acquainted with Colo. Jas. C. Maples, please to state when you knew him, how long your acquaintanceship lasted; and where he lived from the years 1840 to 1847.

Answer. The first acquaintance I ever had with Maples was when he was passing up and down with his cattle in 1842; I knew him while he remained this country. He lived a part of his time at the Big Savannah.

4th Int. by same. Please to state where you have resided from the year 1840 to date.

Ans. I lived on Hiwassee River, just above the Carter ford (sometimes called the Parker ford when I lived there), from 1840 to 1842. In 1842, on the 1st day of June, I think, I moved from there about three miles, about a south course, where I have resided ever since.

5th Int. by same. Where has complainant resided since 1840?

Ans. He resided on the Big Savannah in 1842; I knew him for a short time after that; shortly I have known nothing of him.

6th Int. by same. Please to state, if you can, where William Watkins resided in the year 1842, and give the distances by the usual Indian trail, from where complainant resided to your house, and thence to that of said Watkins.

Ans. Wm. Watkins resided in 1842 on the waters of the Hiwassee River; from where complainant resided to my house was called between ten and twelve miles, and it was called two or two and a half miles from my house to Wm. Watkins', the way the trail went.

7th Int. by same. If you know anything of a cabin built by William Watkins for the purpose of shelter whilst herding cattle, please to tell exactly where said cabin stood.

Ans. It stood on the east side of what is called the Little Frog or Crooked Mountain. It is something like a half a mile or three quarters from the Frog Mountain Creek, on the east side of said creek.

8th Inter. by same. On which side of Frog or Crooked Mountain is the Frog Mountain Creek named in your last answer, and into what river does said creek enter?

Ans. Frog Mountain Creek is on the east side of the mountain, and runs into Ocoee River.

9th Int. by same. Was the cabin alluded to in your last answer on or near the usual Indian trail from Hiwassee Oldtown (sometimes

called the Big Savannah), to the Ducktown settlements, on the Ocoee River?

Answer. It was close to the trail.

10th Int. by same. In passing along the trail named in the last question from Watkins' cabin described by you, towards the settlements in Ducktown, what creek would you first cross after leaving said cabin?

Ans. A creek called Rock Creek.

11th Int. by same. If there was any running water near the cabin built by Watkins, as before alluded to, please to state whether it emptied into Frog Mountain Creek, or Rock Creek, or directly into the Ocoee River.

Ans. There was, and I think it runs directly into the river.

12th Int. by same. How far was Watkins' cabin before alluded to from the Ocoee River?

Ans. I think about a mile and a half, I don't know precisely. I passed from the river to the camp several times up and down in hunting.

13th Int. by same. Please to state the distances, as nearly as you can, counting by the usual Indian trail, from where William Watkins' family resided to the cabin or camp built by him for shelter in herding cattle, as described by you, and thence to the nearest settlements existing in Ducktown at that time, and thence to the land in dispute.

Ans. I think it was between eight and ten miles from Watkins' residence to said cabin, and between four and five miles to the nearest settlement in Ducktown, where Elias Davis lived. I do not know the distance from there to the land in dispute.

14th Int. by same. Is there any mountain between what you call Frog or Crooked Mountain, and what is now known as the Copper Mines in Ducktown?

Ans. If there is I have never heard it named; there is some ridges and gaps which you go through; I have never heard it called any Mountain between that and the Copper Mines.

15th Int. by same. If you have ever passed over the whole distance by the usual Indian trail from Hiwassee Oldtown to Ducktown, passing by Watkins' camp, and Elias Davis's, please to state how many distinct mountain ranges you crossed on the west side of Frog Mountain, and how many on the east side, and also which is the highest mountain on the whole route.

Ans. From Watkins' residence to the Little Frog Mountain there was but one leading ridge to cross. There are some ridges between the cabin and Elias Davis's, but how many or how few I cannot tell. There is no leading mountain between the Frog Mountain and Elias Davis's. I would call the Little Frog Mountain the highest.

16th Int. by same. In your last answer you speak of *Little* Frog Mountain; please to state where is *Big* Frog Mountain.

Ans. The Big Frog Mountain is on the south side of the Ocoee River.

17th Int. by same. Please to state whether Little Frog Mountain and Big Frog Mountain lie in the same range—being separated by the Ocoee River.

Ans. I would consider them in the same range, and separated by the Ocoee River.

18th Int. by same. Please to state whether William Watkins has ever, to your knowledge, built any other cabin on or near the Frog Mountain besides the one described by you.

Ans. If he has I don't know it, nor ever heard of it.

19th Int. by same. May you not be mistaken as to the position of Watkins' camp or cabin, and may it not be on the *west* instead of the *east* side of Frog Mountain?

Ans. I know it is not on the west side.

20th Int. by same. Please to state when the cabin before described by you as erected by William Watkins was built, and for what special purpose it was put up.

Ans. It was built in the year 1842, as well as you recollect, for the purpose of keeping cattle for Mr. Lea and Calvin Maples.

21st Int. by same. State, if you can, at what time in the year 1842 Watkins' camp or cabin was raised.

Ans. I cannot say as to any particular time. It was in the spring of 1842.

22d Int. by same. Please to state whether you was in the habit of hunting with William Watkins, and whether you were with him at his camp during the summer of 1842.

Ans. I was in the habit of hunting with Wm. Watkins, and was at the camp frequently during the summer of 1842.

23d Int. by same. Please to state what you and your associates considered as the western boundary of the Ducktown country about the year 1842.

Ans. It was called Ducktown country after you passed the Little Frog Mountain, from that on your way eastwardly.

24th Int. by same. When you were hunting with Watkins about his camp, whose position you have before described, did you and said Watkins consider yourselves as then hunting in the Ducktown range?

Ans. I did, it was called that.

25th Int. by same. State, if you can, whether the complainant, Wm. P. Lea, and Col. J. C. Maples, took their cattle by your house on the Hiwassee River towards the mountains; and if aye, state when and where they took them.

Ans. They took them past my house in the year 1842, I think about the last of March; they were taken to the Watkins' cabin, on the other side of the Frog Mountain.

26th Int. by same. Please to state how you know that the cattle

of complainant and Maples were taken to the Watkins cabin on the other side of Frog Mountain.

Ans. I saw them driving the cattle passed my house, and I saw the same cattle there afterwards, at the Watkins cabin.

27th Int. by same. Please to state whether there is any circumstance of known date by which you are enabled to determine the time when the cattle were driven by your house, as stated in your last answer.

Ans. I know they were driven by there in 1842 by entering the land where I now live. I entered it at one cent per acre. The cat- was driven by before I entered the land.

28th Int. by same. When did the price of unappropriated lands in the Ocoee District fall to one cent per acre?

Ans. I think on the 5th of April, 1842.

29th Int. by same. At what time did you enter the land on which you now reside?

Ans. I think I entered it a short time after the office was opened at one cent.

30th Int. by same. Please to state what quantity of land you entered at one cent per acre, as stated in your last answer, and describe as fully and precisely as you can where it lies.

Ans. I entered 120 acres. It lies about three miles from Hiwassee River about a south course on the main road from Carter's Ford to Ocoee down Greasy Creek; the entry was made in the name of Sylvester Blackwell, who entered it for my benefit.

31st Int. by same. Please to state, as nearly as you can, how many days before the entry alluded to in your last answer was made, the cattle of complainant and Col. Maples were driven by your house towards the mountains.

Ans. I cannot tell the number of days; it was but a short time. The cattle was driven by my house the last of March, and I entered the land a short time after the land office opened at one cent.

32d Int. by same. Please to state what you may know about the cattle of complainant and Col. Maples being run out of the range, as to how it was done, why, by whom, and when.

Ans. As to my own knowledge, I know nothing about it.

33d Int. by same. Please to state whether you saw complainant and Col. Maples driving cattle by your house towards the mountains at any time after you had entered the land on which you now live; if aye, state whether among the cattle so driven there were any of the cattle previously taken by your house by the said parties before you made the said entry; and if aye, state how you knew them to be the same cattle.

Ans. I saw them drive the cattle past my house both before and after I entered the land on which I now live. I took them to be the same cattle they took past both times. I have seen the same cattle at Watkins' cabin. I have no other means of knowing them to be

the same cattle; they were called Lea's and Maples' cattle at the cabin.

34th Int. by same. Please state whether you were at Watkins' cabin when he herded the cattle of complainant and Col. Maples, after they first drove the cattle by your house, and before the price of land in the Ocoee District fell to one cent per acre; and if aye, state whether you saw the same cattle there at that time.

Ans. I do not think I was.

35th Int. by same. Please to state whether the circumstances connected with the running of the cattle of complainant and Col. Maples out of the range was or was not a subject of general notoriety among yourself and neighbors about the time the price of lands in the Ocoee District fell to one cent per acre, and the subject of frequent and general conversation.

Ans. It was the report through the country that the cattle was run out about that time.

Resp'ts by their sol. except to the last question and answer because the question is leading and indicates the answer to the witness, and because the answer is merely hearsay.

J. B. COOKE, *Sol.*

Which exception is overruled.

JAS. SMITH, *Com.*

36th Int. by same. Have you ever objected to persons residing at a distance keeping cattle in the range near your residence when they did not own land in your neighborhood?

Ans. I have, and drove cattle out myself from about me.

37th Int. by same. Please to state whether William Watkins herded cattle for complainant or other person at his cabin near Frog Mountain in the year 1843.

Ans. I don't think he did.

38th Int. by same. Were you frequently at Watkins' cabin in the year 1843, and would you have known the fact had Watkins had cattle there under his care at that time?

Ans. I was there but once or twice in 1843, once with Watkins hunting. If Watkins had any cattle there that year, I did not see or hear of any; he might have had, but if he had I did not know it.

39th Int. by same. Please to state where the cattle belonging to the Savannah farm, sometimes called the Big Savannah, were kept during the grazing season of 1843, 1844, 1845, 1846 and 1847, and by whom herded during each of those years.

Ans. I do not know where they were kept, nor who herded them in 1843, 1844, 1845, only from hearsay in 1846 and 1847. William Pace herded them near the foot of the Little Frog Mountain on the west side, where he then lived; I was there with Caswell Lea when he had the cattle there.

40th Int. by same. You have said that you moved to your present residence in June, 1842; please to state how far, and in what direc-

tion from your house, William Pace then lived, when he left that residence, and where he had since resided.

Ans. William Pace in 1842 lived about one mile and a half in a west direction from my present residence. He left there in 1843 or 1844, and moved to where he kept the cattle in 1846 and 1847.

41st Int. by same. Please to state whether you were in the habit of frequently hunting with William Pace after he moved to the place where he kept Caswell Lea's cattle in 1846 and 1847; and also state whether said Pace herded the cattle of said Caswell Lea or of any other person in the range near his house during the year 1844.

Ans. I was in the habit of frequently hunting with Wm. Pace after he moved to the place where he kept the cattle in 1846 and 1847, and don't think Pace herded any cattle near his house in 1844; if he did, I did not know anything about it.

The further taking of this deposition is adjourned over until tomorrow morning 7 o'clock. JAMES SMITH, *Com.*

Wednesday, 24th October, 1855. Met pursuant to adjournment.

Cross-examination.

1st Int. by respondents' sol. State how far it is on a direct line from the Savannah farm to where Watkins lived in 1842.

Ans. I suppose not more than nine miles from the lower end of the Savannah where Lea lived.

2d by same. How far is it from the lower end of the Savannah farm to the upper end?

Ans. I think they call it two, two and a half, or three miles.

3d Int. by same. How far is it on a direct line from the upper end of the Savannah to where Watkins lived in 1842?

Ans. I hardly think it is six miles, not more than that.

4th Int. by same. How far is it on a direct line from where Watkins lived to where he kept the cattle at the camp in 1842?

Ans. I think about eight miles.

5th Int. by same. Whereabouts does Frog Mountain Creek, upon which you say Watkins built his camp, run into Ocoee River?

Ans. It runs into Ocoee River just below where John Defriese lives.

6th Int. by same. How far is that below where Elias Davis then lived, at what is now known as the Kirby Place?

Ans. I have never been up the river since the road was opened, and never heard what it was called.

7th Int. by same. How far is it from where Watkins built the camp to the mouth of what you call Frog Mountain Creek?

Ans. I suppose about a mile and a half.

8th Int. by same. In going the trail from where Watkins built the camp to where Elias Davis then lived, how far is it from where you cross Frog Mountain Creek to where you cross Rock Creek?

Ans. Something like a mile, I think.

9th Int. by same. Is there no mountain between these two creeks?

Ans. There is a ridge; I don't call it a mountain; people that live in the flat woods might call it a mountain.

10th by same. Where does Rock Creek empty into Ocoee River, and how far does the Indian trail spoken of cross Rock Creek from its mouth?

Ans. I think they call it between two and three miles above John Defriese's; I have never been along that route; I do not know how far it is from the Indian trail down Rock Creek to the mouth; I have never been down the creek to the river.

11th by same. In going from Watkins' camp to Ducktown, whereabouts does the old Indian trail spoken strike Occee River, or come near to it?

Ans. Above Rock Creek between that and Davis, is the nearest place that I could ever see.

12th by same. How far below where Elias Davis lived?

Ans. I do not know; some distance below; I did not pay any attention to the distance, not expecting it to be called in question.

13th by same. How far is it from Rock Creek to Brush Creek on the Indian trail in question?

Ans. I do not know the creek by that name.

14th by same. What do you call the creek that runs into Ocoee just above where Elias Davis then lived?

Ans. I never had any name for it.

15th by same. Is there a creek running into Ocoee River just above where Elias Davis lived?

Ans. I think there is.

16th by same. How far is it on the Indian trail from Rock Creek to that creek?

Ans. I suppose something like three miles; it may be farther or not so far; it has been a long time since I was along there.

17th by same. Is there no mountain between Rock Creek and that creek?

Ans. I don't call it any mountain.

18th by same. Is Rock Creek in what you call Ducktown?

Ans. People that are acquainted with the country call it Ducktown, or in the borders of Ducktown; it is not in the settlements of Ducktown.

19th by same. Who did you ever hear say that creek was in the borders of Ducktown?

Ans. I have heard several say it; I do not know that I can mention any particular person.

20th by same. Do you say that the creek you call Frog Mountain Creek is in Ducktown?

Ans. It is called so; I don't know it to be so.

21st by same. Who calls it so?

Ans. I have heard several call it so; I do not know any particular one at this time.

22 by same. Were you ever in the settlements of Ducktown, and if so, when?

Ans. I have been in the settlement of Ducktown; it was some nine or ten years ago.

23 by same. Looking west from Ducktown, do you not see several miles off a high mountain, and is not that mountain between where Watkins built the camp and Ducktown?

Ans. Looking west from Ducktown you can see several miles off a high mountain; it is not between where Watkins built the camp and Ducktown; it is to the left going yon way.

24 by same. Does not that mountain put into the Ocoee River above Rock Creek, and if so, how far?

Ans. It does not; there may be spurs of it that does.

25 by same. Were you ever at old John Davis's on or near Ocoee River, and if so, when?

Ans. I was there once about nine or ten years ago.

26 by same. Was not that part of Ducktown there thickly inhabited?

Ans. There was a right smart settlement there then.

27 by same. Can you give the boundaries of Ducktown? if you can, please do so.

Ans. I cannot.

28th by same. How long after the 5th of April, 1842, according to your best recollection, was it that Sylvester Blackwell entered your land?

Ans. It was, I think, not more than eight or ten days afterwards, if that.

29th by same. How long was it, according to the best of your recollection, after Blackwell entered your land until the cattle of Lea and Maples were driven past your house the second time?

Ans. I think it was some days.

30th by same. Was your land entered as an occupant or by general entry?

Ans. At general entry.

31 by same. Whereabouts on Ocoee River does the Little Frog or Crooked Mountain strike or come to the river?

Ans. A short distance below where John Defriese lives.

32 by same. How often have you talked with Wm. Pinckney Lea, the compl't, or his agent, Albert Miller Lea, about the testimony you were to give in this cause?

Ans. I have not talked with any of them but once; I did not know there was such a thing in agitation, till one day last week Wm. P. Lea came to my house.

27 by same. Have you had no conversation with A. M. Lea upon the subject of what you would swear?

Ans. We were talking a little about it yesterday, very little.

28 by same. What time yesterday?

Ans. In the evening.

Re-examination.

1st Int. by complainant's agent. Please to state whether you were in the habit of hunting near the cabin where William Watkins herded cattle for complainant and Col. Maples; and if aye, tell the different years you may have hunted there; name the different persons that may have been with you there; state how many days altogether you probably have hunted in that vicinity, and how many nights you have probably lodged in the said cabin.

Ans. I was not in the habit of hunting near the cabin where Watkins herded the cattle. I hunted some there in 1842, and some in 1843. Wm. Pace and Warren Dodson was with me there the last time I was there, probably in 1844. I think John Runion was with us. I cannot tell the number of days I have hunted there. I sometimes staid two or three days at a time, and sometimes not more than two. I have lodged in the said camp 8 or 10 nights, and probably more.

2d Int. by same. Were you at Watkins' camp during the grazing season of 1842, whilst he was also there? and if aye, state how often.

Ans. I was there in 1842, while Watkins was there, twice I think.

3d Int. by same. When hunting with the persons named in your two last answers in the vicinity of Watkins' camp, was anything said by you in regard to where you were! and if anything, please to state by what name that region or section of country was usually called among you.

Ans. I don't recollect that anything was said about it; if there was, it has slipped my recollection at this time.

4th Int. by same. Please to explain, if you can, why the mountain called by you Little Frog Mountain is sometimes called, also, Crooked Mountain.

Ans. That I cannot tell.

5th Int. by same. When were you last at Watkins' cabin when he kept the cattle?

Ans. I think in 1844.

Re-cross-examination.

1st Int. by resp'ts' sol. How far is it from where old John Davis lived, in Ducktown, to where Elias Davis then lived, now known as the Kirby Place?

Ans. I suppose about four miles.

2d by same. What was the state of the grass and vegetation at the time Lea and Maples' cattle were first drove out to the range, and at what time in the spring is it usual for people to drive cattle into the range in that country?

Ans. It was very short; about the 15th of April is the usual time to drive cattle to the range.

And further this deponent saith not.

his
ANDERSON + PARKER.
mark.

Depo. of Marcus L. Carrigan.

Marcus L. Carrigan, aged about forty years, being duly sworn on the Holy Evangelists of Almighty God to speak the truth, the whole truth, and nothing but the truth, deposeth as follows:—

1st Interrogatory by complainant's agent. Are you acquainted with the parties in this cause?

Ans. I am acquainted with Mr. Wm. P. Lea and Euclid Waterhouse, and know, by sight, Thos. H. Calloway, John Caldwell, and Samuel Congdon.

2d Int. by same. Please to state where you have lived from the year 1840 to the present time.

Ans. In the year 1840, I lived in McMinn County, Tennessee. About the 1st days of March, 1842, I moved to Polk County, in the 6th District, on the trail from the Carter Ford on Hiwassee River to Greasy Creek, a little over one mile and a quarter from the river, at which place I remained until January, 1849, when I removed to McMinn County, Tennessee, and remained there one year. I then removed to Doct. James Hawkins' in Polk County, Tennessee, where I remained about one year, and then removed to the Big Savannah and remained there about two years, and then removed to Monroe County, Tennessee, and remained there one year, and then returned to the Big Savannah where I have lived ever since.

3d Int. by same. Please to state whether your residence, in 1842, was on the Indian trail from Hiwassee Oldtown (now generally known as the Big Savannah) to Ducktown, on the Ocoee River.

Ans. It was.

4th Int. by same. Please to state, as nearly as you can, the distance from the residence of complainant on the Big Savannah to where you lived in 1842, and thence to what is commonly known as Crooked or Frog Mountain, and thence to Copper Hill, in Ducktown, by the usual Indian trail.

Ans. From the Big Savannah to where I lived in 1842 is about ten or eleven miles, and from where I lived to the Frog Mountain from eight to ten miles; by the usual Indian trail it may be eleven or twelve miles; from the Frog Mountain to Copper Hill I never saw measured, from three to four miles I suppose.

5th Int. by same. Please to state where William Watkins resided in the year 1842, and how far from your own residence at that time.

Ans. In 1842 he lived a mile and a quarter or a mile and a half from my house, in Polk County, in the 6th District.

6th Int. by same. Please to state whether William Watkins herded cattle for complainant Lea, and Col. Jas. C. Maples, in the mountains near or east of his residence; and if aye, please to state how many he herded, when he herded them, and where he herded them, giving any circumstances by which you are enabled to recall the dates to your recollection.

Ans. I saw them taking cattle out there, Mr. Lea and Mr. Maples

were with them; they passed by my house. William Watkins herded cattle for them in the year 1842, out at the Frog or Crooked Mountain. I cannot tell the number; he had a good big gang. He herded them at the Little Frog Mountain or Crooked Mountain. He herded them in the year 1842. The date is recalled to my recollection from my marriage, which occurred on the 20th day of February, 1842. The day and date of my marriage is set down in my Bible.

7th Int. by same. Please to state what connection there is between the date of your marriage and the herding of complainant's cattle by William Watkins.

Ans. It was the first year I ever lived to myself in a house of my own.

8th Int. by same. At what time in the year did you move your family into the house on the trail from Hiwassee River to Greasy Creek, where you say you lived in the year 1842?

Ans. From the 1st to the 5th day of March, 1842.

9th Int. by same. At what time of the year did complainant Lea and Col. Maples take their cattle past your house when taking them to the range, as stated in your 6th answer?

Ans. Some time in the month of March. I did not think cattle could live. It was very forward.

10th Int. by same. Please to state what you may know in relation to the cattle of complainant and Col. Maples being in the grazing grounds or range beyond or east of the Frog or Crooked Mountain; and also state what William Watkins may have told you on that subject during the year 1842.

The respondents by their sol. except to so much of the above questions as relates to what William Watkins may have told witness, for the reason that Watkins is a competent witness, and what he may have said to others is no evidence. J. B. COOKE, *Sol.*

Which said exception is overruled by the commissioner and the witness permitted to answer. JAMES SMITH, *Com'r.*

Ans. I never saw them east of the Crooked Mountain myself, I have seen them east of it. Wm. Watkins told me he was keeping cattle at the Frog or Crooked Mountain for them for corn to live on.

11th Int. by same. Please to state whether the cattle herded by Watkins for Lea and Maples were driven out of the range or scattered about in the mountains shortly after they were placed in the care of said Watkins on or near the Frog Mountain; and if aye, state, from the best information you had at that time, by whom and why the cattle were so driven out or scattered.

Ans. Mr. Watkins told me that they were scattered or scared out by a bear skin being fastened on a yearling by some of them Ducktown people, on account of said Lea not having title to any land there.

Resp'ts by their sol. except to the above question and answer because it introduces mere hearsay testimony, and if intended to im-

peach the witness, Watkins, there is no sufficient grounds laid for said purpose. COOKE, *Sol.*

Which exception is overruled by the com.

JAMES SMITH, *Com.*

12th Int. by same. Please to state whether yourself and neighbors made objections to the keeping of the cattle of complainant and Maples by Wm. Watkins near his residence; and if aye, what was the ground of such objection, and what did said Watkins do in consequence thereof.

Ans. We did object to the keeping of the cattle near Watkins' residence on account of their eating up the range. Said Watkins said we need not make a fuss about it, that he would take them out to the Frog or Crooked Mountain; and Watkins did take them out to the Frog Mountain.

13th Int. by same. If any conversation took place between yourself and complainant, or Col. Jas. C. Maples, at the time they drove their cattle by your house, please to state what was said at that time.

Ans. They asked me if I had settled there, and I told them I had. I asked them who was going to keep their cattle, and they said Watkins.

14th Int. by same. Please to state at what season of the year it was when you heard or understood that the cattle of complainant and Col. Maples were driven from the range.

Ans. About the last of March or first of April. It was not long after they were taken out.

15th Int. by same. Please to state whether complainant and Col. Maples took their cattle back again to where William Watkins herded them, after they had been run out or scattered.

Ans. They took them back a short time after that.

16th Int. by same. If you had any conversation with Col. Maples or complainant whilst taking their cattle back by your house, please to state what was said.

Ans. I had not.

17th Int. by same. Please to state whether the cattle were again disturbed in the range after they were taken back by complainant and Maples; and, if not, why were they not again disturbed.

Ans. I never heard any more complaint of the cattle being disturbed. The reason was, they said, that Lea had entered land there.

18th Int. by same. Please to state whether William Watkins herded cattle for complainant more than one season.

Ans. Not while I staid in the mountains.

19th Int. by same. Please to state, if you can, who herded cattle for complainant in the year 1843, and where they were kept during the grazing season of that year.

Ans. I don't know who kept them, or where they were kept that year.

20th Int. by same. If you are acquainted with one William Pace,

please to state where he lived in the year 1844. How far and in what direction from your house.

Ans. He lived some four or six miles from my house at that time, out towards the Little Frog Mountain, on the west side of said mount.

21st Int. by same. Please to state whether you were frequently at the house of William Pace during the year 1844, and whether you would have known the fact had said Pace been herding cattle during that year for complainant, or for Caswell Lea, or for Jas. C. Maples.

Ans. I was not frequently at the house of William Pace in 1844; not more than once, if that. He might have herded cattle for some of them that year, but I don't think he did; I don't know.

22 Int. by same. If William Watkins had herded cattle for complainant in the year 1843 at the cabin, on or near Frog Mountain, would you have known the fact?

Ans. I would have known the fact, being very intimately acquainted.

23d Int. by same. May you not be mistaken as to the year in which you say William Watkins kept or herded cattle for complainant and Col. Maples?

Ans. I am not mistaken in the year, unless they set down the record of my marriage wrong. It was set down the next week or so after my marriage. I looked at the record yesterday, or had it looked at.

24th Int. by same. Please to state what was the state of the vegetation at the time when *when* you say complainant and Col. Maples first took their cattle by your house to the range, and whether you then considered the grass sufficiently grown to support them.

Ans. Vegetation looked scarce and bad, and I thought the cattle would die.

25th Int. by same. About the year 1842, at what time of the year was it usually considered, by yourself and neighbors, cattle could subsist in the range?

Ans. I can't say at what time in the year the neighbors considered they could live. It was the first year I ever lived in a range country.

26th Int. by same. Please to state the distance by the Indian trail, as nearly as you can, from the cabin where you say William Watkins salted the cattle of complainant and Col. Maples in 1842, to the nearest settlements on the east side of said mountain, and also to the nearest settlements on the west side of the same.

Ans. Dodson was the nearest on the west side; I suppose five or six miles. Elias Davis was the nearest on the east side, some three or four miles; I don't know exactly.

Cross-examination.

1st Int. by resp'ts' sol. Who lives now where Elias Davis lived at the time you speak of?

Ans. I don't know.

2d Int. by same. Did he then live on Ocoee River, at a place where John Kirby has since lived?

Ans. I don't know who has lived there since. It was on Ocoee River.

3d by same. You have stated it was somewhere between three and four miles from the camp, where Watkins herded the cattle, to where Elias Davis then lived. Please state how far it was from Elias Davis' to Copper Hill.

Ans. I cannot say.

4th Int. by same. Is it not, according to the best of your recollection, about four miles?

Ans. It may be that, or it may be more, or not so much.

5th Int. by same. Did Elias Davis then live on the Indian trail, heretofore spoken of by you, leading to Ducktown?

Ans. He did.

6th by same. Was Watkins' camp, where he herded the cattle, on the west side of the Frog Mountain; and, if so, how far from that camp was it over to the east side of that mountain?

Ans. It was on the west side; but how far over to the east side I can't say.

7th by same. Did you ever know who it was run the cattle out or scattered them in the mountain; and did you ever have any conversation with the person or persons who did it?

Ans. No, sir; I don't.

8th by same. When you say, in answer to a question of compl't's, that they said the cattle were not run out afterwards, because Lea had entered land there, who do you mean it was that said so?

Ans. Mr. Watkins and Jas. C. Maples.

9th by same. Does not the region of country known as Ducktown, all lie east of the Frog or Crooked Mountain, spoken of heretofore in this deposition?

Ans. It does.

10th by same. You have stated that you continued to live at the same place from forty-two to forty-nine; please state at what time in the spring of these years did the grass and vegetation get up sufficient to graze stock in the mountain, and at what time did people usually drive their stock out in those years?

Ans. Grass usually got up about the middle of April, some years sooner and some later, owing to the season; they took cattle to the range at various times, owing to the season, some seasons a week or ten days earlier than others, or more.

11th by same. Did not Watkins tell you *you* that the cattle that were run out of Ducktown, were some that strayed off and went over there of their own accord.

Ans. He did not tell me that.

12th by same. Don't you know who herded complainant's and Maples' cattle in 1843.

Ans. I do not.

13th by same. Were they driven out by your house that year? state also if you know who kept or herded them in 1844.

Ans. They were not driven out by my house in 1843, as I recollect, and don't know who herded them in 1844.

14th by same. What is it that makes you think the cattle were driven out of the mountains about the last of March or first of April, 1842; is there any fact that brings that definitely to your recollection?

Ans. Nothing, only from hearsay, and cannot say whether it was the last of March or first of April, or middle of April.

15th by same. You have stated that you had the record of your marriage examined on yesterday; state who it was examined it for you, and told you the date of it; also state if you can either write or read writing.

Ans. Mr. Lea and my brother-in-law; Arthur Nelson looked at it; I can't write, but can read plain writing.

Re-examination.

1st Int. by complainant's agent. In answer to the fourth question of your examination in chief, you say "from the Frog Mountain to Copper Hill I never saw measured, from three to five miles I suppose," meaning the distance. Please to state whether you meant the direct distance, or that by the usual Indian trail.

Ans. By the usual Indian trail.

2d Int. by same. Please to state about how many days elapsed between the time you moved to your house near William Watkins', to the time when the complainant and Col. Maples first brought their cattle by your house.

Ans. From five to ten days. It may be a little more or less.

3d Int. by same. Please to state whether the land where Wm. Watkins salted the cattle of complainant, was entered at the time he kept the cattle there; and also whether the lands generally in that vicinity were vacant at that time.

Ans. I do not know whether any of the land was entered there at that time or not. It was said there was vacant land in that vicinity,

4th Int. by same. Please to state whether you know of any person making entries of land in the vicinity of your residence, after you moved to the place where you lived in 1842.

Ans. None, without it was Henry Ellis. He entered lands that spring. He also entered some for me adjoining my home place.

Re-cross-examination by Resp'ts' Sol.

1st Int. by resp'ts' sol. Do you know anything about Frank W. Lea giving Wm. Pinckney Lea permission to drive his stock out into the range in that section? and if so, state when and all you know about it.

Ans. I do not.

And further this deponent saith not.

his
MARCUS L. + CARRIGAN.
mark

Jan., 1856.

Ozi Bell, a witness for complainant, aged about 38 years, sworn as aforesaid, deposeth as follows:—

1st Interrogatory by complainant's agent. Please to state where you lived in the year 1842, and at what precise date you arrived at that place.

Ans. I moved to Ducktown, about four miles north of Copper Hill, where I now live, in 1842, on the 16th day of February.

2d Interrogatory by same. How far and in what direction did Henderson Smith from you in 1842?

Ans. I suppose it to be about three miles, a little north of west.

3d Int. by same. How far and in what direction did Wm. Elder live from Henderson Smith's in 1842?

Ans. I cannot tell.

4th Int. by same. Where did William R. Witt live in 1842?

Ans. He lived at the Isabella Mines, something over a mile from Copper Hill.

5th Int. by same. Do you know where Henderson Smith now lives?

Ans. I do not.

6th Int. by same. Were Henderson Smith and Wm. R. Witt in the habit of hunting together in the mountains about Brush Creek during the year 1842?

Ans. They were out hunting very often, but where they hunted I don't know.

7th Int. by same. Did you procure some bear meat from Wm. R. Witt in the year 1842?

Ans. I got a mess from him in 1842 or 1843, I can't tell exactly which, but I think it was 1842.

8th Int. by same. How long after you moved into Ducktown was it when you got the bear meat from Wm. R. Witt?

Ans. I do not know that I can tell exactly.

9th Int. by same. Can you tell whether the spring of 1842 was unusually early or otherwise, giving circumstances by which you recall the facts.

Ans. It was the earliest spring that has been since I have been in here. The reason why I know is that I went down after my horse and was at Columbus the 4th of April, the same day I was there I saw two men from Spring Creek going on to Cleveland to enter land on the next day. Thomas Peals was one of them, the other was by the name of Seerest. The reason I had gone after my horse was that grass had come so that he could live in the woods. I had no feed to feed him on.

9th Int. by same. At what price were unappropriated lands in the Ocoee enterable, at the time you saw the two men at Columbus going to Cleveland to enter lands?

Ans. I think it had come down to one cent per acre.

10 Int. by same. Did the two men you met at Columbus express

any special anxiety to be at Cleveland the next day after you saw them?

Ans. They wanted to get there, they were afraid some one else would get their land joining them.

11th Int. by same. Did you understand from the two men you met at Columbus, that they could not have entered their lands at one cent any time before that date?

Ans. I don't know that they could have entered, that was the time they stated that it came down to one cent as well as I recollect.

12th Int. by same. At what time in 1842 did the last snow fall in Ducktown, and how was the weather after that date?

Ans. On the 15th night of February, I think, from that on it moderated off, and there were but a few frosts I think, as well as I can remember.

13th Int. by same. How do you recall the date last given?

Ans. By my moving in. I moved on the 16th, the snow fell the night before I moved in.

14th Int. by same. Did you hear of cattle being brought up from the flat wood below the mountains to the range about Brush Creek in the year 1842?

Ans. I don't know that I can recollect about the cattle that season.

15th Int. by same. Did you hear of cattle being run out of the range a few miles west of you, the same year you moved into Ducktown, by a bear skin put upon one of them?

Ans. I heard talk of their being run out, but I don't recollect whether it was that year or not.

16th Int. by same. At the time you left home to go to Columbus for your horse, was the grass then sufficient to support cattle in the range?

Ans. It was where I lived, or I thought so, any how.

Cross-examination.

Question by resp'ts' sol. Do you know of any person herding cattle in the mountains west of Ducktown in 1843? and, if so, state who.

Ans. All I know is by crossing the mountain. I saw cattle sign there. I did not know whose they were.

And further this deponent saith not. OZI BELL.

Depo. of H. J. Carter for Compl'ts. Nov. 1856.

1st Interrogatory by the complainant's agent, A. M. Lea:—

Please state where you lived in the years 1840, 1841, 1842, and 1843, having reference particularly to what was then known as Hiwassee Old Town, giving any facts or circumstances by which you are enabled to fix dates.

Answer. In the year 1840 I was living with John Weaver in what was known and called the Hiwassee Old Town in Polk County, Ten-

nessee. In the year 1841, I was living with Alfred Weaver about a half a mile lower down the river on the same side of the river. In the year 1842 I lived on the old Savannah farm, the property of Caswell Lea, on the south side of the river. In the year 1843 I was living on John Weaver's place on the same side of the river. In the year 1840, I fix that date by the age of my oldest son who was born that year, and on the first day of the year 1840, on the river. I fix the year 1841 by a severe spell of fever and chills I had in that year. I fix the year 1842 by the age of my oldest daughter who was born the latter part of the year 1841. I don't know as I have got the date of 1843 fixed up by any fact or circumstance particularly.

2d Int. by same. How many years did you live on the Big Savannah farm?

Answer. I only lived on the Savannah farm one year.

3d Int. by same. If you know anything of certain cattle being herded in the range by one William Watkins, please to state whose cattle they were, where herded, and when so herded; and give all the circumstances under which you came to such knowledge.

Answer. In the year 1842, William Lea and Calvin Maples were keeping their cattle together in Ducktown, as they said. They took them across the river below my house and put them in my field the evening before they started to the mountains with them, and next day they started them to the mountains and said they were going to take them to Ducktown. I know of them taking cattle to the mountains in the years 1841 and 1843. The only circumstances I can give is just they were keeping their cattle in the mountains.

4th Int. by same. Did you plant corn that same year in the field in which Lea & Maples put their cattle over night?

Answer. Yes, sir, I did.

5th Int. by same. Was your corn planted before or after they put their cattle in the field?

Answer. It was planted before.

6th Int. by same. How long before?

Answer. I planted my corn the same day they brought the cattle there.

7th Int. by same. Did you make any objection to their putting their cattle in your field?

Answer. Yes, sir, I did.

8th Int. by same. If any bargain was made with you and Lea about the use of the field, state what it was.

Answer. He just said if the cattle came back and destroyed my corn they could pay for it.

9th Int. by same. What objection had you to the cattle being turned into your field?

Answer. I was afraid they would come back and get into the field they were taken out of, was my objection to it. The fence was not good.

10th Int. by same. Did the cattle come back into your field?

Ans. Yes, sir.

11th Int. by same. What took place in consequence of the cattle coming back into the field?

Answer. Well, we supposed the cattle had destroyed about a third of the crop, and we made it stand for the rent.

12th Int. by same. From whom did you rent that field?

Answer. I rented it from Caswell Lea.

13th Int. by same. In a former answer you named William Lea and Calvin Maples as having put the cattle in your field; state whether the William Lea referred to is the same as the complainant in this case.

Answer. Yes, sir, he is the same.

14th Int. by same. What time of the year did you plant the corn in the field where the cattle were placed?

Answer. I don't recollect exactly what time it was, but it was a remarkably early spring, and I planted very early. I think I was done planting by the fifth of March.

15th Int. by same. Have you any recollection, apart from the time you planted corn, as to the fact whether the spring of 1842 was early or late?

Answer. It was early to the best of my knowledge. Peach trees bloomed out in February that spring.

16th Int. by same. State, if you can, whether the spring of 1843 was early or late.

Answer. It was a very late spring; I mean the spring of 1843 was very late.

17th Int. by same. State any circumstances by which you know the spring of 1843 to have been very late.

Answer. On March, 1843, we had a very deep snow, and I might say we had snows in that month, one fell on top of another.

18th Int. by same. If you know anything of the cattle of Lea and Maples herded by William Watkins having been run out of the range, please to state how, when, by whom, and what was done by them in consequence thereof.

Answer. James Jackson came down to fetch Lea the news that his cattle were run out of the mountains, and in a day or two after Jackson was down, William Watkins was down also, and Watkins said there was a bare skin tied on a yearling that run them out; I don't recollect the *the* time of year it was, but it was early in the spring. The cattle were not gone long until they were run back; I don't know who done it, but Mr. Watkins said the reason they were run out was, because William Lea had no land in the mountains, and William Lea said if that was the reason they were run out he would come to Cleveland and enter land.

19th Int. by same. State, if you can, whether the cattle were run out of the mountains before or after the price of land in the Ocoee District fell to one cent per acre.

Answer. It was before the price of lands fell to one cent per acre.

20th Int. by same. How do you know that it was before the price of lands fell to one cent per acre?

Answer. I don't know only by what William Lea said. He was naming over that when the lands fell to one cent per acre he would then come to enter land, so that he could have land in the mountain for his cattle to herd upon.

21st Int. by same. If you saw and conversed with any other persons who were coming to Cleveland to enter lands at one cent per acre, state who they were, and whether such conversations, if any, took place before or after the cattle were run out.

Answer. I saw and conversed with Newton Taylor and Col. Biggs who come down to enter land at one cent an acre, and said they were holding back until land came down to a cent per acre. They were entering their land for the timber. This conversation was after the cattle were run out.

22d Int. by same. If you heard any person or persons state that Wm. P. Lea, the complainant, had entered any lands in the mountains as a protection to his cattle in the range, please to state who told you, when they told you, and where the lands lay, as nearly as you can tell.

Respondents, by their solicitor, objects to the foregoing question as incompetent that the declarations of no one save the respondents or those through whom they declare would be admissible. GEO. W ROWLES, *Sol. for Resp'ts.*

The above objection is overruled.

J. H. GANT, *Com'r.*

Answer. I don't recollect of hearing any person say that William P. Lea had entered land in the mountains as a protection to his cattle, but himself. He himself told me so as he went home. He had been down to Cleveland, and as he went home, he said he had entered land. I don't recollect as he said where the land lay.

23d Int. by same. Please to state, as nearly as you can, the month and day of the month when you met the complainant in Benton, as stated in your last answer, and who was with him at the time.

Answer. He was by himself, but I am not able to state the month; but it was a few days after the land fell to one cent per acre.

Cross-examination.

Question. Did the place you lived on in the year 1842 belong to Caswell Lea, and did it constitute part of the place known as the Savannah farm? and state if you please whether the land you farmed lay on the Benton and south side of the Hiwassee River?

Answer. Yes, sir, the place I lived on in the year 1842 belonged to Caswell Lea, I rented it from him. I don't know whether it constitutes a part of the Savannah farm or not, and the land I lived on lay on the Benton and south side of the Hiwassee River.

Question. How far was this land from the residence of Caswell Lea on the Savannah farm?

Answer. It is about two miles and a half from Caswell Lea's house up the river.

Question. State if the mansion house or residence of Caswell Lea was on the south or north side of Hiwassee River.

Answer. It is on the north side of the river.

Question. The place where you lived in 1842, and of which you have been speaking, how much cleared land was on it, had it just been cleared, or had it been cleared for some time, judging from the appearance?

Answer. A part of it was just cleared and a part had been cleared for some time. There was between fifteen and twenty acres cleared.

Question. How long had you known the land before you went there to live, and was it cleared or in the woods when you first knew it?

Answer. I had only known it two years before I went to live upon it. I believe it was all cleared when I first knew it.

Question. How far was this land from the mountains, or was it on it?

Answer. It was close to the mountain, or rather in the gap of the mountain.

Question. This mountain, is it known as the Chesnut ridge, or how far from it?

Answer. The Chestnutt ridge is on the other side of the river, and the land I lived on is some four or five miles from the Chestnutt ridge.

Question. The land you lived on, was it in the Hiwassee or Ocoee District?

Answer. It was called the Hiwassee purchase, but I do not know which district it lay in.

Question. Did or not Lea have his cattle in the Chesnutt ridge in 1840 and 1841?

Answer. In 1840 he herded his cattle in what is called Bean's Mountain. In 1841 I don't recollect whether he took his cattle to Ducktown, or to some of the near mountains.

Question. How far is Bean's Mountain from the Savannah farm?

Answer. It is some five or six miles from the Savannah farm to Bean's Mountain.

Question. How much land did Lea Caswell or William Pinkney Lea enter in Bean's Mountain?

Answer. I am not able to say.

Question. If you have been on and about Bean's Mountain? If so, state was the range good or bad, in the years, 1840, 1841, 1842, and 1843.

Answer. I was never on Bean's Mountain, and don't know how the range was on that mountain.

Question. When the cattle were put in your field as stated, was William Pinkney Lea along with them?

Answer. Yes, sir.

Question. When did you first see these cattle again, how long after that?

Answer. I don't recollect, but it was but a short time.

Question. Where did the cattle go to when they come back, as you have stated in your examination in chief?

Answer. A part of them that come home stayed about in the woods there, on the Hiwassee, and a portion of them were found out on Conesauga.

Question. Did you see the cattle when they come back yourself, or are you only speaking from information?

Answer. Yes, sir, I saw them myself.

Question. Where did you see them at, and who was there, and what was being done with them?

Answer. When they come back they went in the field where Lea had left them all night. They were took back to the mountain again after he said he had entered land.

Question. How did they get in the field, and how long did they remain there, and what damage did they do?

Answer. There was a cross-fence in the field, and they got in the upper end of the field, and stayed in about a week, I expect, and they eat off the corn, and William said just let it go, and that should stand for the rent.

Question. Who took them away, and where were they taken to?

Answer. William and his hands and Mr. Maples started with them and said they would take them to Ducktown.

Question. You will state if much damage was done to your corn, how high was it when they got in?

Answer. They just eat it off. There was no great deal of damage done. It was early enough for me to have planted it over, if William Lea would have fixed the fence, but he said just let alone. I would suppose my corn was half leg high when they got in.

Question. In 1842, had you been to Ducktown?

Answer. No, sir.

Question. Have you been to Ducktown since 1842? if so, how far do you believe Ducktown to be from the Savannah farm?

Answer. I never was there in my life. I don't know how far Ducktown is from the Savannah farm.

Question. Do you know whether or not, from where you lived in 1842, there are continued ranges of mountain on to where Ducktown is said to lay?

Answer. Yes, sir, that has been my understanding, that ranges of mountains run from where I lived to Ducktown. I was never further than Greasy Creek.

Question. How far is Greasy Creek from the Savannah farm in

your judgment, and is it very mountainous between the Savannah farm and Greasy Creek?

Answer. It is about eight miles from where I lived to the mouth of a little creek that leads to Greasy Creek, and I have no recollection how far it is from the little creek to Greasy Creek, but it is nine or ten miles to Greasy Creek from the Savannah farm. It is not very mountainous between the Savannah farm and Greasy Creek. The road goes along right up the river; people ride and walk it.

Question. Do I understand you as saying that from the place where you lived at in 1842, to Greasy Creek, the county is not full of mountains, or do you only mean that the place where the road runs up the river you have not to cross many mountains?

Answer. I mean it is a ledge of mountains all the way up from where I lived at the Savannah farm to Greasy Creek, but in going up the river, we did have to cross no mountains in going up the river along the road, but it is a ledge of mountain on both sides of the river.

Question. State whether the river does not run rather an east and west course, and the mountains rather a north and south course.

Answer. Yes sir, the river runs west course through the mountains, and the mountains range a north and south course.

Question. Did you go with Lea when you say the cattle were taken back?

Answer. No sir.

Question. In what year, if any, did you help Lea to drive his cattle from the neighborhood of Greasy Creek?

Answer. I never helped him drive cattle at all from there.

Question. You have stated Lea told you he had entered land in the mountain as a protection to his cattle. How much did he say he had entered?

Answer. I think he said he had entered eighty acres about Ducktown, or out in that range where he had had his cattle run from.

Question. Do you know were William Watkins lived in 1842?

Answer. No sir, I did not know. I was acquainted with him from seeing him pass the road to Lea's.

Question. Have you conversed with any one before being examined to day, as to what you could prove touching the matters you have been examined to day on, by complainant's agent, A. M. Lea?

Answer. I conversed with Mr. Lea a few minutes, but not on the matters I have been examined about. I have not conversed with any person else about the matters I have been examined.

Question. When did you converse with Mr. Lea, was it to day, or before?

Answer. I conversed with him one day last week, he was there at my house, I was a few minutes with him to day in Mr. Grant's store.

Question. Are these the only conversations you have had with him, and in those conversations are you confident nothing was said about the matters to which he has examined you to day?

Answer. These are all the conversations I have had with Mr. Lea, and we was talking about these things, that was his business, to see me. He called to get his dinner, and asked me if I had lived up there, but I don't know that he particularly quizzed me about the circumstance, and further deponent saith not. his

H. J. + CARTER.
mark

Joseph Cobb's Deposition. Oct. 1855.

Joseph Cobb, a witness for complainant, aged about fifty years; and after being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows, viz:—

1st Interrogatory by the complainant. (1) Please to state whether you were in the habit of frequent and familiar intercourse with William Pinckney Lea, the complainant, and Col. J. C. Maples, in the year 1842; (2) whether said Lea and Maples had their cattle herded together in the mountains during the grazing season of that year, and if aye, (3) where and by whom they were herded; (4) whether the cattle of said complainant were disturbed in their grazing grounds; (5) and if aye, what you learned from complainant, if anything, about the cause of such disturbance; (6) what agreement was made between him and said J. C. Maples, if any, in consequence; (7) what complainant said he would do in regard thereto; what he did do, or said he had done in reference to the entry of lands in the mountains, if any such thing was done; (8) what complainant did with his cattle after they were run out of or disturbed in the range, if they were so run out or disturbed; (9) and please to state anything else known to you which may be of any benefit to either party to this cause in regard to an entry or entries of land claimed by complainant to have been made by him in Ducktown, Polk County, Tennessee, on 5th April, 1842.

Ans. I was, 1. That was my understanding, 2. They were herded that year by William Watkins, on this side of what the call the Frog mountain, 3. I understood by complainant, Wm. P. Lea, that his cattle were run out, 4. He, complainant Lea, said that he would enter some mountain land to have a claim when the land came to one cent per acre. The cause of complainant Lea's cattle being disturbed was attributable to the fact of his having no claim to the land upon which were herded, so conjectured by complainant Lea, 5. Relative to any agreement between Lea and Col. J. C. Maples, I know of none *of none* in reference to the entry of land, 6. As it relates to complainant Lea saying that he had entered any land, I don't know that he ever told me that he had at that time, 7. What I now recollect about the cattle of complainant Lea is that he drove his cattle back to the mountain after they were run out, but I don't recollect at what time precisely, 8. As it relates to the place where said complainant Lea intended to make his entry he never told me, that I recollect of, 9.

Int. 2d by same. Please to state whether you have ever been to the place where William Watkins herded the cattle of complainant in 1842; and if aye, state where it is in reference to the Frog Mountain, and how far it is from the Savannah farm, by the route usually travelled.

Ans. I was there once in the year 1842. In reference to the Frog Mountain it is on the west side of said mountain, some few miles; I "supose" it is between five and eight miles distant from the *senter* of the Savannah farm.

Int. 3 by same. Please to state the several points by which you travelled in going from the Savannah farm to the cabin where Wm. Watkins herded the cattle of complainant in 1842, giving the distances from point to point as nearly as you can.

Ans. Col. J. C. Maples and myself were together; we went past where a man lived, I believe, by the name of Benjamin Carter, I *supose* three or four miles from the Savannah farm, and I don't recollect of passing any other house until we arrived at Watkins's—probably from three to five miles.

Int. 4th by same. In regard to the house to which you say you went with Col. J. C. Maples, please to state whether that was the permanent residence of the family of William Watkins.

Ans. As it relates to that I don't know whether it was his permanent residence or not, more than I saw household furniture and his family there, and said Watkins proposed to sell me the land; there was some land in cultivation.

Cross-examined.

1st Question by complainant's sol. You have stated in answer to the first question of complainant's agent, that complainant spoke of entering mountain land in the conversation you had with him at that time; did you understand from him he intended entering land in which he might graze the cattle of the Savannah farm, and near that farm for grazing purposes?

Ans. He did not tell me where he was going to enter land, as I recollect of. I inferred it was mountain land, at one cent per acre.

2d By same. You will please state if you, about the time you have spoken of, were in the habit of grazing cattle in the mountain so stated.

Ans. I was in the habit of having my colts out on the Chestnut mountain, but had no cattle out that I recollect of.

3d by same. About what time in the spring was it your custom and the custom of your neighbors to take stock to the mountain?

Ans. I think along about the first days of April.

4th by same. How far did you then reside from the Savannah farm, I mean about the years 1842 and '43 and '44?

Ans. To the middle of the farm about two miles and half.

5th. Did complainant Lea ever herd, or have his cattle herded on

or near the Frog Mountain after the year 1842? if not, state why he did not if you know.

Ans. I do not know.

And further this deponent saith not.

JOSEPH COBB.

Emmons P. Douglas' Depo. for Compl. Oct., 1855.

Emmons P. Douglas, a witness for complainant, aged about thirty-nine years, after being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows, viz:—

1st Interrogatory by complainant. Please to state whether you are acquainted with the parties to this suit.

Answer. I am acquainted, to some extent, with William P. Lea and Thomas H. Calloway.

2d Int. by same. What is your present employment?

Answer. Clerking for the County Court of Polk County.

3d Int. by same. Are you acting Clerk of the County Court of Polk County? and if aye, how long have you held this office?

Answer. I am and have been since the first Monday of April, 1848.

4th Int. by same. Please to state where you lived from years 1840 to 1844 inclusive, and what was your employment during that time.

Answer. I was a citizen of McMinn County, Tennessee, in 1840 and 1841, and early in the year 1842; about 19th January, I removed to the Savannah, in Polk *Polk* County, where I lived until the fall of 1844.

5th Int. by same. Please to state where the complainant lived from the years 1840 to 1844 inclusive, and in what was he employed.

Answer. He was considered a citizen of Polk County, and was in the employment of Caswell Lea, and in partnership with him was my understanding; and on the Savannah.

6th Int. by same. Please to state what you mean by the term "Savannah" used in your last answer; if you mean the Savannah farm, sometimes called Hiwassee Old Town, please to state where said farm is situated in reference to the Hiwassee River and the Chilhowee Mountain.

Ans. By the term Savannah I mean the farm on the Hiwassee River or Old Town, owned, at the time, by Caswell Lea, and is the farm first on the north side of the Hiwassee, when it passes the Chilhowee Mountain.

7th Int. by same. Please to state whether you have had business transactions with the complainant extending through several years, and whether you were in the habit of seeing him and being frequently in his company during your residence on the Savannah farm.

Ans. I have had transactions of a business nature with him during the time I lived on the farm, and was frequently in company with him.

8th Int. by same. In the transactions alluded to in your last answer, did you perceive that he exhibited any peculiar or unusual

ability in managing his affairs; or the reverse? and did he, during such transactions, exhibit an avaricious and grasping disposition?

Answer. In reference to his ability for business I found him competent to trade, and every way honorable and upright in his agreements and contracts, and dealings with me.

9th Int. by same. What is the general character of complainant for probity and integrity?

Ans. As far as I have ever had any acquaintance I found, and so believe, him to be honorable and prudent. (The further taking of this deposition is continued until to-morrow morning at 8 o'clock.)

ZACHARIAH ROSE, *Justice of the Peace.*

Wednesday Morning, 3d October, 1855.

The further taking of the foregoing deposition is resumed. Present the same parties as on yesterday.

ZACHARIAH ROSE, *J. P.*

10th Int. by same. Please to state whether the people living on and adjacent to the Savannah farm were in the habit of selling their surplus grain to the settlers in the mountains to the south and east of that place.

Ans. They were in the habit of selling the surplus corn to persons around, in that and other directions.

11th Int. by same. When you lived on the Savannah farm, had you heard of a region or district of country in Polk County, Tennessee, known under the general appellation of Ducktown? if aye, please to state what region was so designated by yourself and neighbors in ordinary conversation about the year 1842.

Ans. I did. And understood it to be the southeast extreme portion of Polk County.

12th Int. by same. Please to state what you understood, in 1842, to be the western boundary of what was, in a general way, called the Ducktown region.

Ans. I was not familiar sufficient with the country between my residence and Ducktown to have formed any opinion about that line.

13th Int. by same. For what purpose did you understand the Ducktown region to be chiefly valuable about the year 1842?

Ans. The land was cheap and could be procured, and I considered it valuable because a home could be had by a man of moderate means.

14th Int. by same. Was the Ducktown country, about the year 1842, considered chiefly valuable for farming, grazing, or mining purposes?

A. I considered it valuable to make a poor man a home, on account of the price per acre.

15th Int. by same. Had you ever been in the Ducktown country previously to the year 1842, or during that year?

Ans. I had not.

16th Int. by same. Please to state whether the residents of the flat country about the Savannah farm were in the habit of having

their cattle herded in the mountain during the grazing season, about the time you lived on the Savannah farm.

Ans. No persons of the farm to my knowledge had any cattle out but Mr. Lea (Caswell), otherwise not now remembered.

17th Int. by same. In your last answer you speak of Mr. Caswell Lea's cattle; please to state whether you understood the complainant as having any interest in the stock and crops on the Savannah farm about the year 1842.

Ans. I understood the farm and stock to be the property of Caswell Lea, but that William P. Lea had some investment made in the farm and stock.

18th Int. by same. Please to state whether the complainant resided on the Savannah farm and had charge of the same.

Ans. He did reside on the farm and had charge of that portion not rented by Caswell to the several resident renters.

19th Int. by same. Please to state whether Caswell Lea resided upon the Savannah farm about the year 1842, or for some years before and after that date.

Ans. He did reside on the farm, as I remember, until after the spring of 1843.

20th Int. by same. If Caswell Lea was in the habit of visiting his Savannah farm at regular periods, please to state at what time or times of the year he was accustomed to be at that place.

Ans. He was in the habit of visiting the farm about once a year, and that sometimes from 25th of December to Feb. 1st, or thereabouts, for the purpose of receiving the rents.

21st Int. by same. Please to state, from your best recollection, aided by any written memoranda made at the time, whether Caswell Lea was at the Savannah farm during the summer season of the year 1842 and 1843.

Ans. My recollection is he was not on the farm during the summer of 1842 or '3 while the crop was growing.

22d Int. by same. Please to state whether you know in regard to the complainant's taking cattle to the grazing region or range in the mountains in company with the cattle of Col. J. C. Maples; stating as nearly as you can at what time in the year they were taken from the Savannah farm, where taken, and by whom herded during that summer.

Ans. I knew, during my residence on the farm of Wm. Lea and Col. J. C. Maples, taking off cattle in the spring of the year, but do not remember of the date; and did so understand that the *cattel* were taken south and east of the settlement, but did not know who was the agent with the *cattel* in the range.

23d Int. by same. Please to state at what season of the year it was usual for complainant to take the cattle belonging to the Savannah farm to the range.

Ans. In the spring of the year, after the winter was past.

24th Int. by same. Please to state, as nearly as you can, the

month and day of the month when the range was usually considered sufficient to support cattle in the mountains lying to the south and east of the Savannah farm.

Ans. That varied as the spring was early or late; sometimes one and another date.

25th Int. by same. Please to state whether you heard anything about the cattle of complainant and of Col. J. C. Maples being run out of the range where they were herded during the year that you say they kept them together.

Ans. I remember to have understood of a bear skin being placed over the head of one of Wm. Lea's cattle, which alarmed and scattered the herd, but do not remember the year, or anything about Col. *Mapels' cattel* being along at the time.

26th Int. by same. Please to state whether the fact stated in your last answer about the cattle having been scattered, and was a subject of frequent conversation among the hands on the farm where you resided at the time.

Ans. I frequently *herd* it spoken of during the spring and summer the year it occurred.

27th Int. by same. Please to state whether you heard complainant speak of the circumstances connected with the scattering of his cattle, and as mentioned in your two last answers, about the time of the occurrence; and, if aye, state what he said about it.

Ans. I *herd* him speak of returning with the *cattel*, and so understood him to do—that is, back to the range.

28th Int. by same. Please to state whether you heard complainant give any reason for the cattle being scattered in the range, as referred to in your last three answers; and, if aye, state the reason assigned by him.

Ans. I do not remember of hearing Wm. Lea assign as a reason anything why the *cattel* were driven out.

29th Int. by same. Please to state whether you heard the complainant say, about or shortly after the cattle before alluded to were scattered in the range, that he had been to Cleveland for the purpose of entering some lands in the mountains as a claim to range his cattle in that region; and also state whether he said he had made such entry of lands, and whether you understood from him that the said entry had been made in consequence of the disturbance of *of* his cattle in the mountain range.

Ans. I understood before he was starting back with the cattle that he had gone to Cleveland and entered some mountain land, and that he would have a claim to the range, but do not remember from whom I derive that information.

30th Int. by same. In your last answer you speak of complainant taking his cattle back to the range. Please to state at what time in the year were so returned to the range.

Ans. I do not remember of the time, but was not long after, is my best recollection.

Cross-examination.

First int'y by respondents' solicitor. How long since you had any business transactions with complainant; and how often have you seen him since your last business transaction with him?

Ans. About ten or eleven years since I had any dealings with him, and have seen him but a few times in that space.

2d by same. What was the character of the transactions you had with complainant at the time you have spoken of in your examination in chief?

Ans. I was a renter on the Savannah from Caswell Lea; and he (compl't) was superintending business for Caswell; and as such the tenants were employed to work for Caswell and paid by Wm. Such work as harvest, fodder, boating rails, and some repairs of different kinds on the farm attending the business thereof.

3 question by same. Was complainant then a married or single? Has he ever been married?

Ans. I understood him then as yet to be unmarried.

4th by same. Are you acquainted with the land, which is the subject of controversy in this, embracing what is now known as Copper Hill?

Ans. I am not well acquainted with the land, but know the place.

5th by same. How far is it from the Savannah farm to the land in dispute?

Ans. I suppose about twenty-five miles, the nearest point or road.

6th by same. What kind of route is it from the Savannah farm to Copper Hill, the nearest way, and how many mountains intervene, if any?

Ans. Well, the Frog Mountain is between and a number of small broken mountains east and west, but all do not have to be crossed in going to Copper Hill.

7th by same. How far from the farm to the Frog Mountain of which you speak, and is said mountain a high one, difficult of ascension?

Ans. The distance varies, and some places can be passed and others are impassable.

8th by same. In going from the Savannah farm to Copper Hill, over the route you speak of, at what distance from the farm would you strike the said mountain?

Ans. At a distance of some eight to twelve miles.

9th by same. Is the region of country known as Ducktown, and especially that part of it lying near Copper Hill, tolerably level, and how early was it settled up about Copper Hill?

Ans. A very uneven and broken country; and as to the date of settlement, I am not informed precisely, but suppose about the time the balance of the Cherokee purchase was being settled.

10th by same. Is any of the land about Copper Hill under culti-

vation now, and how long does it appear to have been under cultivation?

Ans. The farm of Patrick Nash and a portion of the farm of John Davis I suppose as now to have been under cultivation for some time; the John Davis farm, a portion of which is an old Indian town.

11th by same. If you have often been in the country called Ducktown, give its boundaries as near as you can, and say whether or not it is bounded on the west by a high range of mountains.

Ans. I understood the Frog Mountain the *boundry* of Ducktown on the W., and was the largest mountain between home and Ducktown when I lived on the Savannah farm.

And further this deponent saith not.

E. P. DOUGLAS.

Deposition of Isaac Smith, Sept., 1856.

Isaac Smith, aged about 59 years, deposeth as follows:—

1st Interrogatory by complainant's agent. Please to state where you resided in the year 1842 and subsequently.

Answer. In Polk County, about two miles from Benton; in the year 1847, I think, I moved to Greasy Creek, where I resided for about seven years, and then moved to the north side of Hiwassee River, where I have resided ever since in Polk County.

2d Int. by same. If you owned lands on Greasy Creek near the old trail from the Big Savannah to Ducktown, please to state whether you were there engaged in making improvements and raising crops before you moved to that place.

Answer. I did own land on that trail on Greasy Creek, and was engaged in raising crops on said land before I moved to that place from the year 1842 till I moved to that place.

3d Int. by same. Did you or not make any improvements on your place on Greasy Creek before the year 1842?

Answer. In the summer of 1841 I commenced deadening timber and done some other work.

4th Int. by same. If you have any knowledge of the cattle of complainant and Col. J. C. Maples having been kept in the range in the mountains, please to state by whom and where they were herded, and when they were so herded.

Answer. The complainant Lee's, and Maples' cattle was in the range in the mountains and part of them were at my plantation on Greasy Creek in the year of 1842, but to say where or by whom they were herded I *noe* not of my own knowledge.

5th Int. by same. Please to state whether you have any written accounts or memoranda by which you are enabled to fix certainly in your own mind that the cattle of complainant were kept in the mountain range in the year 1842.

Answer. I have book accounts of men employed to labor on said land in that year, being the first crop I was engaged in myself on said land; and in the spring of that year I recollect of the cattle

alluded to getting inside of the field before the fence was entirely closed, and the sending of two hired hands to turn them out before the fence was closed; and they set dogs after the cattle and abused them; on my reproving them for their treatment to the cattle, hard sayings and hard feelings grew up between the two boys or lads and their father and myself about their conduct, which was the beginning of a difficulty between the family and myself.

6th Int. by same. At what time of the year were the cattle in your field, as described in your last answer?

Answer. Early in the spring, I think, from the circumstance of my farm not being closed.

7th Int. by same. Please to state how you know that the cattle in your new ground belonged to the complainant.

Answer. I had cattle in the range that year, and in the fall of said year I found some of my cattle in Mr. Lea's possession with the same cattle that was in my field in the spring; and Mr. Lea's cattle being in my mark, in part, a difficulty was likely to grow up between him, Lea, and myself, and I was several times at Mr. Lea's on that occasion before I got all my cattle, or what I did get of them, and I still seen and recognized the same cattle in Mr. Lea's possession, at different times, that was in my field in the spring of 1842.

8th Int. by same. Please to state whether the cattle of complainant came into your field on Greasy Creek from the direction of the Hiwassee Old Town, or from the direction of Ducktown, or from some other direction.

Answer. The gap that they went in at was on the south side of the farm, opposite to where Mr. Lea then lived.

9th Int. by same. When the cattle first came into your farm, did they exhibit any appearance of having been fatigued by driving, or of having been run from the range by fright or otherwise?

Answer. The cattle appeared to be fatigued and frightened.

10th Int. by same. Did you enter any lands in the Ocoee District at one cent per acre?

Answer. I did not, as I now recollect of.

11th Int. by same. Please to state at what season of the year it was usual to place cattle in the range, about the time the cattle were in your field.

Answer. I do not recollect the precise time, but think it was in the early part or middle of April.

12th Int. by same. State whether you had seen any other cattle in the range in the year 1842, before those of complainant came into your field.

Answer. I think they were the first cattle I seen in the range that season.

13th Int. by same. Please to state whether the old trail usually travelled from Benton to Ducktown before the opening of the turnpike up the Ocoee River, runs by where you formerly lived, on Greasy Creek.

Answer. It did.

14th Int. by same. Were you or were you not in the habit of seeing and conversing with persons residing in Ducktown, whilst living on Greasy Creek?

Answer. I was.

15th Int. by same. Please to state whether you are acquainted with the general character of Elias and Young Davis, sons of the late John Davis, formerly of Ducktown, Polk County, Tennessee.

To which question of complainant's agent, respondents, by their solicitor, except, because the general character of Elias and Young Davis, is not in question, except as to truth and veracity, and the question, in its present shape, is irrelevant and impertinent.

JOHN B. HOYL, *Sol.*

Which is overruled. JAMES SMITH, *Com.*

Answer. I am acquainted with the general character of Elias Davis, and have been acquainted with the *carracter* of Young Davis some years past, but not so well acquainted with his character for several of the last years, owing to him being moved to the State of Arkansas for several years, though now returned.

16th Int. by same. Please to state whether you would give faith and credit to Elias and Young Davis as witnesses to a deed in which they and their father were interested, proved by them in 1852 and 1853.

Respondents, by their solicitor, except to the foregoing question, and object to its being answered until the witness states whether or not he is acquainted with the general character of Young and Elias Davis as to truth and veracity. JNO. B. HOYL, *Sol.*

Which is overruled. JAS. SMITH, *Com.*

Answer. I would not.

17th Int. by same. Would you believe Elias and Young Davis on oath in any matter in which they are interested?

Answer. I would not.

Cross-examination by Respondents' Sol.

First Question. Have you now present the books of account on which you rely for refreshing your mind as to the date when you first saw the cattle of complainant at your new ground of which you have spoken in your examination in chief?

Answer. I have not the old books here, but I have a memorandum here present taken from the old books.

2d by same. How long since you took the memorandum from the old books?

Answer. About eight months.

3d by same. Have you ever heard Elias Davis examined on oath in a case in which he was interested?

Answer. I think I have one time only.

4th by same. In what case was that?

Answer. A case against one of the young Conners.

5th by same. Was it a civil or state case?

Answer. A state case.

6th by same. How near have you ever lived to Elias Davis?

Answer. About 16 or 17 miles.

7th by same. Have you ever heard his character for truth and veracity brought in question or made the topic of conversation in his neighborhood?

Answer. I have heard his *carracter* called into question in his own neighborhood, in his own presence and when he was not present, touching what he had swore on oath, and what they, the people, believed he would sware.

8th by same. Have you ever heard Young Davis testify on oath in a Court of Justice?

Answer. I never did, as I recollect of.

9th by same. How near did you ever live to Young Davis?

Answer. About 8 or 9 miles.

10th by same. Are you acquainted with the general character of Jesse Shubird and Crawford Brusnels for truth and veracity, or either of them?

Answer. I am not.

Re-examination.

1st Int. by complainant's agent. Under what circumstances or, for what reason did you make the memorandum from your books alluded to in your answer to the first question of your cross-examination?

Answer. From being subpœnaed by the defendants in this cause to give evidence at Cleveland, Bradley County, and it not being convenient for me to carry my books. And further this deponent saith not.

ISAAC SMITH.

Nov. 1856.

James Glass, aged 58 years, being next called, deposes and saith:—

1st Interrogatory by complainant's agent. Please to state where you lived in the year 1842, and how many years you lived at that place.

Ans. I cannot say.

2d Int. by same. If you ever lived on Isaac Smith's land on Greasy Creek, Polk County, Tennessee, please to state how long you lived there.

Ans. I did live on his land, I went there in the fall season, and left there the latter part of the next season.

3d Int. by same. In what were you engaged during the winter you resided on Isaac Smith's place?

Ans. I was clearing land for Smith, and hired by him, Smith.

4th Int. by same. Was the winter you lived there an open warm winter, or otherwise?

Ans. I think it was an open warm winter, for we worked all the time.

5th Int. by same. If you have any knowledge of William Watkins having herded cattle in the range the year you lived on Isaac Smith's land, please to state where he herded them, and how you came to the knowledge of the circumstances.

Ans. I cannot say of my own knowledge, but understood by others that there was cattle herded there by Watkins somewhere in the mountains.

6th Int. by same. Please to state whether or not, when engaged in working in Isaac Smith's field on Greasy Creek, you saw any cattle come into the field; and if yea, state how many, whether they had the appearance of having been frightened, whose cattle they were, and what time of year they were there.

Ans. I understood from others that there was stock came in there, I did not see them myself, as to whose they were I did not understand, I suppose it was in fall of the year.

7th Int. by same. At what time of the year did you leave Greasy Creek?

Ans. It was along in the fall season, or in the latter part of the summer.

8th Int. by same. How long before you left Greasy Creek was it that the cattle came into Isaac Smith's field?

Ans. I cannot say exactly how long, but think it was some time before I left there. And further this deponent saith not.

his
JAMES + GLASS
mark.

Deposition of James Hawkins. October, 1855.

At the Court House at Benton, Polk County, Tennessee, 1 P. M., 5th October, 1855. Just after the closing of the package containing the depositions of Emmons P. Douglass and others, taken before Zachariah Rose, Justice of the Peace, acting as a Commissioner (by consent of parties) instead of James Smith, whose commission is enclosed with the depositions aforesaid, said commission being issued by said Nathan Gammon, Clerk of the Circuit Court of the United States for the District of East Tennessee at Knoxville, to said James Smith, to authorize him to take depositions in the case of William P. Lea *vs.* Polk County Copper Company, Thomas H. Calloway and others, now pending in said Court, Dr. James Hawkins a witness on behalf of complainant, having been previously detained at home by sickness in his family, being now present, it is agreed by the parties present that the deposition of the said James Hawkins shall be now taken before the said Zachariah Rose, acting as commissioner, as aforesaid.

WM. P. LEA,
By his agent, A. M. LEA.
J. B. HOYLE,
Solicitor for Respondent.

James Hawkins introduced as a witness for the complainant Lea, aged about fifty-eight years, and after being duly sworn on the Holy Evangelist of Almighty God, deposeth as follows, viz:—

1st Interrogatory by complainant. Are you acquainted with the parties to this suit?

Ans. I am acquainted with William P. Lea complainant, and several of the respondents.

2d Int. by same. Please to state whether you now reside near what is known as the Savannah farm on the Hiwassee River, in Polk County, Tennessee; and if aye, please to state how long you have resided there.

Ans. I have resided about one mile from the residence on said farm about eighteen years.

3d Int. by same. Please to state whether the complainant resided on the Savannah farm about the year 1842.

Ans. He lived on the Savannah at that time.

4th Int. by same. Please to state what you know (if anything) in regard to complainant, in conjunction with Col. J. C. Maples having taken his cattle to the grazing grounds in the mountains.

Ans. They, J. C. Maples and complainant Lea, kept their cattle together, one or two years, perhaps more. They kept them on Bean's Mountain one or two years; I think in 1842 they took them out to the Little Frog Mountain at Watkins' camp at the foot of the Frog Mountain on the west side. I was with Watkins at the camp afterwards, and he told me there was where he kept them, meaning the cattle of complainant Lea and Maples.

5th Int. by same. In your last answer you say that you were at Watkins' cabin with him when he spoke of having kept the cattle of complainant Lea and J. C. Maples. Please to state when you were so at that cabin.

Ans. It was three or four years after he kept the cattle there.

6th Int. by same. Please to state what neighborhood or settlement you understood the cabin of Wm. Watkins, alluded to in the last question, to be situated.

Ans. I don't know any name for the settlement.

7th Int. by same. Please to state whether the cabin where Wm. Watkins kept the cattle in question, is near the horse-path usually travelled from the Savannah farm to Ducktown; how far it is from the Savannah farm to said cabin by the usual trail, and how far thence to the school section in Ducktown by the usual trail.

Ans. Watkins' cabin is near the Ducktown trail, and is about by the usual trail 18 or 20 miles, and from that cabin to Ducktown by the usual trail is about 8 or 9 miles.

8th Int. by same. Please to state whether complainant at any time whilst his cattle were herded by William Watkins with those of J. C. Maples, held any conversation with you about where he had taken his cattle to range.

Ans. I had frequent conversations with complainant Lea and J.

C. Maples; they told me their cattle were run out of the range, or scared out because they had no claim to the land upon which they were herded.

9th Int. by same. If at any time whilst the cattle of complainant and of J. C. Maples were herded by William Watkins, you heard complainant say where he and said Maples had taken their cattle to range, please to say where he then said he had so taken them.

Ans. I understood from complainant Lea that he had taken them out to that range to get them out of the settlement where they would do no mischief. I understood the place to which they were taken to be on the crooked back, or Little Frog Mountain.

10th Int. by same. Please to state whether you understood from the complainant, during the time Wm. Watkins herded his cattle in the mountains, that they were in the neighborhood of what was then known as the Ducktown settlements.

Ans. I understood from complainant Lea that his cattle were run out of the range by the settlers on the other side of the mountain, I mean the Ducktown settlers, as the cattle had got over there; the Ducktown people said that he, complainant Lea, should not bring in there such a drove of cattle to eat up the range, as he had no land there. This is what complainant Lea told me shortly after they were run out; I never heard the Ducktown people say anything about it.

11th Int. by same. Please to state whether you heard complainant Lea speak of obtaining any lands in the mountains as a claim to graze his cattle in that region, about the time you say his cattle were run out of the mountains.

Ans. I heard him say he intended to enter some lands up there as soon as it come to one cent per acre, and if they run them out then he would make them smoke for it; I think these are the words as well as I can recollect.

12th Int. by same. When did the price of unappropriated lands in the Ocoee District fall to one cent per acre?

Answer. I think it was on the 5th April, 1842.

13th Int. by same. Please to state whether the conversation reported in your answer to my eleventh interrogatory was before or after the date named in your last answer.

Ans. It was a few days before the land came to one cent per acre.

14th Int. by same. Please to state whether you have any personal knowledge of complainant's going to Cleveland about the 5th day of April, 1842, with the expressed intention of entering lands in the mountains as a claim to range his cattle there.

Ans. I don't think I saw him after we had the conversation as above stated, until after the land office was opened, and don't recollect seeing them that day.

15th. Int. by same. Please to state at what time after the 5th April, 1842, you may first have seen complainant.

Ans. I can't say how long, but it was not very long.

16th Int. by same. Please to state whether complainant ever said

anything to you about having actually made an entry or entries of land in the mountains as a claim to the range; and if aye, state the precise date of such conversation as nearly as you can, and where he said he had entered the land, if any.

Ans. He said he had entered some lands up in there where he kept his cattle; as it relates to the precise place, I don't recollect of him telling me where it was. The conversations took place some time after the land had come to one cent per acre.

17th Int. by same. Please to state whether complainant Lea and Col. J. C. Maples took their cattle back to Watkins' cabin after they had been run out; and if aye, state if you can, whether the cattle were so taken back after the price of lands had fallen to one cent per acre.

Ans. It was my understanding from complainant Lea and J. C. Maples that they had gathered and taken their cattle back to the range again after they were run out. It was after the land had come to one cent per acre. It was along that spring in April or May as well as I recollect.

18th Int. by same. Please to state, if you can, whether the cattle of complainant and that of Col. J. C. Maples, were much scattered by being run out of the mountains, so as to require some time to collect them.

Ans. I heard them say they were scattered pretty bad.

19th Int. by same. Please to state whether the cattle of complainant remained undisturbed in the range after they were returned to it, as formerly stated by you.

Ans. I never heard him say they were interrupted any more.

Cross-examination.

1 Question by respondent solicitor. Do you know where the land in controversy in this suit lies?

Ans. It lies in Ducktown; but the section I don't know.

2 by same. You will please state if you know of your own knowledge of William P. Lea, the complainant, ever entering lands in the mountain.

Ans. I have no knowledge of any more than what he told me. And further this deponent saith not.

JAMES HAWKINS.

STATE OF TENNESSEE,
Polk County.

I certify that the answers to foregoing deposition are in my own handwriting, and that I am in no wise related to either of the parties to said suit, nor am I counsel or attorney for either, and that the same was taken before me on the 5th day of October, 1855, in the town of Benton, at the Court House, in the presence of William P. Lea, complainant, A. M. Lea, agent for said William P. Lea, John Caldwell, one of the respondents, and John B. Hoyle, solicitor for respondents, set forth above, and it has not been out of my posses-

sion, altered, or defaced, added to, or changed, since it was signed by deponent, James Hawkins. This 5th day of October, 1855.

ZACHARIAH ROSE,
Justice of the Peace for Polk County, Tennessee, and Commissioner.

Deposition of A. J. Hooper. Sep. 22, 1856.

STATE OF TENNESSEE,
Polk County.

Be it remembered, that on the 22d day of September, 1856, I, James Smith, by virtue of the power in me vested by the commission hereto prefixed, to examine all witnesses as well on behalf of Wm. P. Lea, complainant, as of the Polk County Copper Company, and other respondents in a matter of controversy pending in the Circuit Court of the United States, held at Knoxville, for the 8th Judicial Circuit, in the District of East Tennessee, did cause to come before me, at the Court House in Benton, Polk County, Andrew J. Hooper, John Runion, Robert N. Fleming, Thomas S. Hoyle, Tho. R. McClary, Jeremiah Sillard, Isaac Smith, John Witteron, all of whom being duly sworn on the Holy Evangelist of Almighty God, deposeth and saith as follows: Andrew J. Hooper, aged about forty years, deposeth as follows:—

1st Interrogatory by A. M. Lea, agent of complainant. If you know anything about the cattle of complainant having been kept in the range in the mountains, please to state where, when, and by whom they were herded.

Answer. When I came to Polk County on the 25th of July, '42, William Wadkins was then keeping cattle for William P. Lea, Calvin Maples, as I had it from his own mouth; Wadkins then had the cattle in the range around where he lived, and between thar and where father lived, which was about two miles and a half.

2d Int. by same. If you know anything about the cattle of complainant and Calvin Maples having been run out of the range, please to state when it occurred and by whom it was done.

Ans. I know nothing of my own knowledge, I understand from rumor that they were run out the spring before I came to the country.

Resp'ts by their sol. except to the last answer as far as details the name of the county. COOKE, *Sol.*

3d Int. by same. If you ever made any family record for John Runnion, please to state what was the character of such record, when, and on whose authority it was written.

Ans. I made one; it was setting down the age of his children; I think it was in 1842; it was done at Runnion's request.

And further deponent saith not.

ANDREW J. HOOPER.

Deposition of John Jenkins. Nov. 1856.

STATE OF TENNESSEE,
Polk County.

Be it remembered, that on the 1st day of January, 1856, I, James Smith, Commissioner, appointed, and by virtue of the commission hereto prefixed, to examine all witnesses as well on behalf of William Pinckney Lea, complainant, as of the Polk County Copper Company, and others, respondents or either of them, in a suit now pending in the Circuit Court of the United States for the District of East Tennessee, held at Knoxville, did call and cause to come before me, at Edward Hotel in Ducktown, Polk County, Tennessee, the following witnesses on behalf of the complainant in said cause, to wit, John Jenkins, Nathaniel Stuart, Jr., Ozi Bell, Saml. McJunkin, Wilson Abercrombie, Polly Witt, John Rodgers, who being duly sworn upon the Holy Evangelists of Almighty God, to depose the truth, the whole truth, and nothing but the truth, deposeth and saith as follows:—

John Jenkins, aged about 27 years, sworn as aforesaid, deposeth as follows:—

1st Interrogatory by complainant's agent. Please to state where you lived in the year 1842, giving course and distance from the land in dispute.

Ans. I lived at that time about a mile or three-quarters of a mile, in about a northeast course from the land in dispute.

2d Int. by same. Please to state what you may know in regard to cattle of complainant being in the range in the mountains west of Copper Hill in the year 1842.

Ans. I saw some cattle out there said to be his. I do not recollect precisely the time, it was a little while before the land came down to 1 cent per acre.

3d Int. by same. How came you to see the cattle in the range?

Ans. I and my father were out there hunting, and saw them.

4th Int. by same. Please to state as nearly as you can where Brush Creek lies, in reference to the first mountain west of Copper Hill, and where it empties into the Ocoee River.

Ans. It lies at the foot of the mountain, on the east side, and runs into Ocoee River, down about Kirley's, where Elias Davis formerly lived.

5th Int. by same. Were the cattle when you saw them near Brush Creek?

Ans. They were on the side of the mountain betwixt the creek and the top.

6th Int. by same. Where did Henderson Smith live when you saw the cattle in the range, and how far were they from his plantation?

Ans. He lives on Brush Creek, up the creek some two miles from Kirley's; the cattle were something like a mile from his plantation.

7th Int. by same. Please to state where Wm. Elder lived when you saw the cattle in the range, and how far they were from his plantation.

Ans. I do not recollect where Elder lived at that time.

8th Int. by same. Please to state any circumstance by which you can fix the date when you saw the cattle in the range.

Ans. I and my father were out hunting there, and in a few days my father went down to Wm. Reup's, in Chatula Creek, in Bradley County, to work for money to enter land.

9th Int. by same. If your father entered land with the money he worked for in Bradley County, please to state at what price, when, and where the land lies.

Ans. He entered the land at a cent per acre, or at least he went for that purpose; he entered it when he went down, or he went for that purpose.

10th Int. by same. Did your father return home after he went down to work for money to enter land before he had made his entry?

Ans. I think not, he entered before he came back, I think.

11th Int. by same. How long after he entered the land before he came home?

Ans. I do not recollect, not more than a week or so. I do not recollect exactly how long it was.

12th Int. by same. How long after you and your father saw the cattle in the range before your father entered his land?

Ans. I don't recollect, he went down to enter land in a few days after we were out there, and I suppose entered land, or had it done before he came back. I don't recollect how long after we were out there, some three or four or five days I recon.

13th Int. by same. Did your father enter his lands as soon as the price of lands in the Ocoee District fell to one cent per acre.

Ans. He entered a part of it when it fell to one cent per acre, or at least he went down for that purpose.

14th Int. by same. Are you sure that it was the same year that the price of lands fell to one cent per acre that you and your father saw the cattle in the range?

Ans. I think it was if I am not mistaken.

15th Int. by same. Did your father go down to Bradley County to work for money to enter land before or after the lands fell to one cent per acre?

Ans. He went before.

16th Int. by same. Please to state what you know about the cattle which you saw in the range being frightened out of the range.

Ans. I just heard of them being run out by a bear skin round one of them.

17th Int. by same. Was the fact of a bear skin being put upon one of the cattle a subject of frequent and common conversation among your neighbors about the time it occurred?

Ans. That was the talk through the country that there was a bearskin some how round one of them and run the rest out.

18th Int. by same. Was the bearskin put on one of the cattle before or after the price of lands fell to one cent per acre.

Ans. I do not think it was far from the time; as well as I recollect, I think it was before, may be.

19th Int. by same. Did you hear of the cattle being run out of the range whilst your father was gone to enter his lands?

Ans. I think they were run out while he was gone. I think I heard them talk about it shortly after he came back.

20th Int. by same. Can you tell why the cattle were run out of the range?

Ans. It was the report through the country that they should not stay in the range. I do not know, but I heard the reason.

21st Int. by same. Were not the settlers in Ducktown generally opposed to having cattle driven into their range from below the mountains?

Ans. I think they were.

22d Int. by same. Please to state by whom the cattle were driven out of the range.

Ans. I do not know.

23d Int. by same. By whom was it generally rumored that the cattle were driven out of the range?

Ans. I heard some talking that they allowed it was Henderson Smith I think that drove them out.

Resp'ts by their sol. except to the last two questions and answers because the first of said questions is directly leading and suggestive of the answer, and the last seek to introduce mere hearsay as testimony.

J. B. COOKE, *Sol.*

24th Int. by same. Was it generally understood among your neighbors that the cattle were run out by persons then residing in Ducktown?

Ans. Yes, sir, that was the report.

Resp'ts' by their sol. except to the last question and answer for the same reasons assigned in the above exception.

J. B. COOKE, *Sol.*

Cross-examination.

Question by resp'ts' sol. How many cattle did you and your father see on the mountain?

Ans. I did not count them.

2d by same. Can you form no estimate of how many there was?

Ans. I don't know how many there were, there were several head?

3d by same. What were they doing when you saw them?

Ans. They looked like they were feeding about, trying to get something to live on.

4th by same. What time of the year was it?

Ans. It was in the spring.

5th by same. What month was it in?

Ans. I don't recollect now.

6th by same. Was the weather cold or warm?

Ans. It was not very cold or very warm, it was common weather in the spring season.

7th by same. How high was the grass.

Ans. I don't think it was very high.

8th by same. What were you and your father hunting for?

Ans. For deer.

9th by same. How old are you now?

Ans. I think if am not mistaken I was 27 in Oct. last.

10th by same. How old were you then?

Ans. I do not know how old I was then?

11th by same. Were you large enough then to hunt for deer with a rifle in the mountains?

Ans. I was, I had been hunting right smart along there.

12th by same. How long had you been large enough to hunt before that?

Ans. I do not know exactly; a right smart while.

13th by same. Who told you and your father that the cattle belonged to compl't?

Ans. I do not know who told him, he told me. He said he supposed they were Lea's cattle. I expect my father had heard of it before, I don't know that he had.

14th by same. How long after you saw the cattle until you heard that they had been run out of the mountains?

Ans. It was not very long.

15th by same. What is your father's name, and where is he now?

Ans. His name is David Jenkins. He is in Texas now.

16th by same. How much land did he enter, and where does it lie.

Ans. I can't tell you. What he entered lies about a mile or three-quarters from Copper Hill, about two miles from here.

17 by same. Who did he sell his land to, and who owns it now?

Ans. He sold it to Mr. Miller. I think Congdon owns it now.

18 by same. Did your father ever own more than three 40 acre tracts in Ducktown?

Ans. I do not know how much he owned.

19th by same. Who did he go to work for in Bradley Co. to get money to enter land with?

Ans. Wm. Kemp.

20 by same. How are you enabled to recollect that it was before the land fell to a cent that he went down there to work?

Ans. I heard him talking of going down to enter land at a cent an acre.

21 by same. Did not John Mastin enter all the land for him that he owned in Ducktown?

Ans. I think not. He got John Mastin to enter some, but I don't think he entered all.

22 by same. How much did he get Mastin to enter for him?

Ans. I don't know.

23d by same. Do you know what time the land fell to a cent per acre?

Ans. I don't recollect that I do now.

24th by same. Was it before or after corn planting time that your father went to comp's to work?

Ans. It was before, I think; before we planted corn anyhow.

Re-examination.

1st Int. by complainant's agent. Are you your father's eldest son?

Ans. I am.

2d Int. by same. At what age did you begin to carry a gun?

Ans. I don't recollect. I have loaded a gun ever since I was large enough to tote one.

3d Int. by same. Did you hear any person besides your father say that the cattle run out by the bear skin belonged to the Leas?

Ans. I heard several talking that they were run, and that was the talk that they belonged to the Leas; that was my understanding.

4th Int. by same. What Lea did you understand the cattle to belong to?

Ans. I don't know that I ever heard what Lea they belonged to.

5th Int. by same. Did you live with your father in 1842?

Ans. I think did. I was living there at that time.

6th Int. by same. Did your father enter the lands on which he lived, or any adjoining lands at one cent per acre?

Ans. As well as I recollect he entered some of it at one cent per acre. I do not know whether it was the land we lived on or some joining. I never paid very much attention to his business.

7th Int. by same. If the grass comes earlier on the east side of the mountain on which you saw the cattle than on the west side, please to state how much earlier.

Ans. Commonly about a week or a little over, earlier.

8th Int. by same. What portion of country was commonly understood by the early settlers under the name of Ducktown?

Ans. Right smart of it, I believe, a part of Georgia, North Carolina, and Tennessee, people call it Ducktown.

9th Int. by same. How far west did you consider the Ducktown country extended about the time the lands fell to one cent?

Ans. It was away down a good piece, I don't know exactly. They called it Ducktown from the time we got into the mountains like, from there clear on.

And further deponent saith not.

his
JOHN + JENKINS.
mark.

Joseph Runnion, aged 77 years, being next called and duly sworn, deposeth and saith:—

1st Interrogatory by complainant's agent. Please to state where you lived in the year 1842.

Answer. I lived on Greasy Creek, in Polk County, Tennessee, and that was the first year I lived in Polk County. I had some cattle, and I had no food, and I took them up on to the Frog Mountain to the range in the month of February, the same year; and that summer following Watkins was keeping cattle for Mr. Lea; and Mr. Lea's cattle having been run off he then went and entered land so that he might have a claim, as I understood.

2d Int. by same. Please to state whether the Mr. Lea named in your last answer is the complainant in this cause.

Ans. He then lived at the Big Savannah, as I understood; that was his home; there is where his cattle run to.

3d Int. by same. Please to state where Watkins kept Lea's cattle at the time named in your last answer.

Ans. He kept them over the Little Frog Mountain on the east side.

4th Int. by same. State, as nearly as you can, how far it was by the trail usually travelled from where Mr. Lea lived to where Watkins kept the cattle.

Ans. I cannot tell the distance, it was about four miles from Greasy Creek.

5th Int. by same. Please to state how, by whom, and what time of the year the cattle were run out of the range.

Ans. It was in the latter part of the summer. It was by there being a bear skin tied on one of the cattle, and by whom I do not know.

6th Int. by same. You spoke of having taken your cattle to the range in the month of February, 1842, state whether the range was then sufficient to support them.

Ans. It was; the ridges were full of maiden cane, and that was the range.

7th Int. by same. Did you enter any lands the first year you came to Polk County?

Ans. I never entered any land.

8th Int. by same. Do you know whether the land in the Ocoee District fell to one cent per acre before or after you took your cattle to the range?

Ans. I think it was at one cent per acre at that time.

9th Int. by same. State, as nearly as you can, how long it was before or after you took your cattle to the range that Lea took his cattle to the range also.

Ans. A short time afterwards.

10th Int. by same. State whether yours and Lea's cattle were in the same range together.

Ans. It was not in the same range; mine was further down towards Ocoee, and theirs was up further on the mountain.

11th Int. by same. Please to state whether your cattle were disturbed in the range at the same time that Lea's were run out.

Ans. My cattle was coming in and was disturbed, and I lost one.

12th Int. by same. Please to state how you were employed about the time the cattle were disturbed.

Ans. I think I was working in my corn, as I recollect.

And further this deponent saith not.

his
JOSEPH × RUNION.
mark.

Eli Rymer's Deposition.

Eli Rymer, aged about forty years, being next duly sworn upon the "wholy" Evangelists of Almighty God, deposeth and saith as follows:—

1st Int. by complainant's agent. Please to state where you now live, and how long you have lived there.

Ans. I live at the head of Greasy Creek in Polk County. I moved there in 1846.

2d Int. by same. Please to state where you lived the four years previous to 1846.

Ans. I lived on the creek about three miles below where I now live. I settled there in 1839.

3d Int. by same. If you know where William Watkins built a cabin for the purpose of shelter whilst herding cattle in the mountains, please to describe particularly its locality.

Ans. I know where Wm. Watkins built a cabin for the purpose of shelter while herding cattle. It is right under the Frog Mountain, on the trail that leads from Hiwassee to Ducktown.

4th Int. by same. Please to state whether in passing along the trail named in your last answer, you cross two prongs of what you call Frog Mountain, and if aye, to which of said prongs you apply that name.

Ans. In passing said trail there are two prongs of the Frog Mountain. I apply the name to the further or eastern prong.

5th Int. by same. Which of the two prongs is the larger mountain?

Ans. The western prong where the trail crosses it.

6th Int. by same. How far, and in what direction from the trail to the point where the two prongs separate?

Ans. I suppose not more than a mile and a half or two miles, in a northern direction.

7th Int. by same. Please to state whether the cabin built by Watkins before alluded to, was on any running water, where such water, if any, empties into the river, and what river.

Answer. It was on, or near a small branch which empties into Ocoee River, in about a mile or mile and a half.

8th Int. by same. If you know creeks, known as Little Frog Mountain Creek and Rock Creek, please to state how Watkins' lies in reference to them.

Ans. The cabin is beyond or east of each of these branches. I know where both the branches are.

9th Int. by same. Have you been long acquainted with the region of country round about where the Watkins' cabin stood? and if so, please to state by what name that region was commonly known about the year 1842.

Ans. I have been acquainted with that region of country ever since about 1839. It was called the Ducktown region.

10th Int. by same. In passing the old Indian trail from Hiwassee Oldtown to Ducktown, at what point do you consider yourself as passing into what was usually known as the Ducktown region, about the year 1842?

Ans. I considered myself as passing into what was usually called Ducktown, when I got to the top of the mountain a short distance from the cabin.

11th Int. by same. Please to state whether you were at the Watkins cabin, heretofore described, when he was herding cattle there; and if aye, state whose cattle they were, and when he so herded them.

Ans. I passed there while he was "hearding" the cattle. I understood they were Maples' and Lea's cattle; Watkins told me so. It was in 1842.

12th Int. by same. Please to state any circumstance or fact by which you are enabled to recall the date given in your last answer; and if you have record of the same, state what it is.

Ans. I have not, only in this way—my first wife left me in the spring of that year, and in that year—probably in August—I passed by where Watkins was "hearding" the cattle going to Dahloniga. I have some papers concerning my wife leaving me, some advertisements, by the date of which I can tell the year correctly. I examined the papers within a week past.

13th Int. by same. If you know anything about the cattle of complainant and Col. J. C. Maples, which you say were herded by Watkins, at his cabin, in the year 1842, having been run out of the range by fright, or otherwise, please to tell all you know about it.

Ans. I understood the cattle was run out by some of the Ducktown people. I know nothing of my own knowledge; it was from what Watkins told me, and public rumor.

Resp'ts' sol. excepts to the last answer of witness, because it is mere hearsay evidence. J. B. COOKE, *Sol.*

Cross-examination by Resp'ts' Sol.

1st Int. by resp'ts' sol. Is not the mountain you call the largest where the trail crosses going from Hiwassee to Ducktown, the divid-

ing mountain between Hiwassee and Ocoee rivers, and does it not run in an easterly direction?

Ans. I think not.

2 by same. After the trail crosses the dividing mountain between the rivers in going to Ducktown, does it not cross a number of high ridges or mountains running from this dividing mountain to the Ocoee River?

Ans. I don't think a great many—there are some small ridges.

3d by same. Is not the mountain east of the Watkins camp the one generally known as Little Frog Mountain, and is it not the continuation of the main mountain running from Hiwassee to Ocoee river west of Turtletown, and west of Ducktown?

Ans. It is. It is the continuation of the main mountain running from Hiwassee to Ocoee River, and it is west of Turtletown and Ducktown.

4th by same. Then state whether the Watkins camp where he herded Lea's and Maples' cattle, was in Ducktown or not.

Ans. I can't say, more than it was called that by the people.

5 by same. How far is it from where the Watkins camp was, to where Elias Davis then lived, now known as the Kirby place?

Ans. I can't say.

6 by same. Where does Rock Creek enter into the Ocoee River?

Ans. Just below the end of Little Frog Mountain.

7 by same. Is Little Frog Mountain east or west of Rock Creek?

Ans. It is east.

8 by same. Where does Frog Mountain Creek run into Ocoee River?

Ans. It runs in below where Rock Creek runs in some mile or two.

9 by same. Is Little Frog Mountain east or west of Frog Mountain Creek?

Ans. It is east.

10 by same. How far is it from where Little Frog Mountain Creek runs into Ocoee to the Kirby place where Elias Davis used to live?

Ans. I can't tell.

11 by same. How far is it from Defries to the Kirby place, and how far from that place to Copper Hill?

Ans. I cannot tell.

12 by same. How far is it from where the Indian trail crosses Frog Mountain Creek to where it crosses Rock Creek, and is there any mountain between them.

Ans. I think something like three or four miles, I can't say precisely the distance, there is a mountain between them.

13 by same. Whereabouts does Little Frog Mountain come to the Ocoee River, is it above or below Defriese's?

Ans. I cannot say.

Re-examined.

1st Int. by complainant's agent. In your examination in chief,

you said there were two prongs to the Frog Mountain; please to state by what name the western prong is usually known.

Ans. I don't know that it ever had any name more, that it is just a prong of the mountain.

2d Int. by same. Is not the western prong of the Frog Mountain alluded to in my last question, sometimes called the Little Frog Mountain?

Ans. It is by some people.

3d Int. by same. What is the dividing ridge between the creeks that run into the Ocoee River and those that run into the Hiwassee River, about where Watkins' camp was when he kept the cattle?

Ans. It is called the dividing ridge, and runs near where I live.

4th Int. by same. Was Watkins' camp where he kept the cattle on the southeast or the northwest side of said dividing ridge?

Ans. It was on the south side.

5th Int. by same. Were you or were you not in the habit of considering the country above the mountains which drains into the Hiwassee as Turtletown, and that which drains into the Ocoee as Ducktown? Was not this the usual distinction made by the Indians and early white settlers?

Ans. All the waters on the east side of Little Frog Mountain that fall into the Ocoee was considered the waters of Ducktown, and those that fell into Hiwassee was considered Turtletown waters.

6th Int. by same. Please to state whether the western prong of the Frog Mountain, as described by you, runs down to the Ocoee River, and lies opposite to the Big Frog Mountain on the south side of that river.

Ans. I think it runs down to the river, and it lies rather above the main body of the Big Frog Mountain south of Ocoee.

7th by same. Please to state where William Pace lived in the year 1843, 1844, 1845, 1846 and 1847.

Ans. He lived a part of the time on this side of where Parker lives and the remainder near the Frog Mountain, but at what year he moved I cannot say; he lived at the last mentioned place till 1847.

8th Int. by same. Please to state what you may know in relation to cattle herded by William Pace in the range about his house, stating whose cattle he herded, and when.

Ans. They were called Maples' and Lea's cattle; he herded them in 1846 and 1847.

9th by same. If you have any circumstances or written documents by which you are enabled to determine the dates given in your last answer, please to state them.

Ans. I have a deed given in 1846, when I moved where I now live. They were herding the cattle when I moved there. I examined the deed last Saturday.

10th Int. by same. How far did Pace reside from the place you moved to in 1846?

Ans. Something like two miles—it may be a little more.

11th Int. by same. Did you see the cattle herded by Wm. Pace during the year 1846 and 1847 ?

Ans. I did.

12th Int. by same. Did the cattle herded by Wm. Pace in the years 1846 and 1847 roam to any distance from his house ?

Ans. They came frequently about my house, further I can't say.

13th Int. by same. Did you and your neighbors make any objection to Pace's keeping cattle in your vicinity for people residing at a distance? and if any difficulty arose out of such objection, state why and when it occurred.

Ans. As to myself I don't know that I interfered much, there was people who were very much opposed to their keeping the cattle there. There was a difficulty grew out of the cattle being herded there. It occurred in 1847, Wm. Pace and one of the Runnins had a quarrel about it at a log-rolling.

14th Int. by same. Did Wm. Pace herd cattle in the range near his house for any non-residents during the years 1844 and 1845 ?

Ans. Not that I know of.

15th by same. Did you reside so near, and were you so frequently at Pace's house that you would have known whether he herded cattle those years for any persons living at a distance, had he so herded them ?

Answer. I would have known it if he had herded them.

Re-cross-examined by Resp'ts' Sol.

1st Int. by resp'ts' sol. How far is it from where Pace lived in 1846 and 7 to the Watkins camp?

Ans. I think it is something like five miles, I can't state precisely.

2 by same. Were you in the Ducktown settlements about the year 1842 ?

Ans. I was.

3 by same. State whether or not that part of Ducktown, about old John Davis now known as Copper Hill, was thickly settled at that time.

Ans. I cannot tell.

And further this deponent saith not.

ELI RYMER.

Deposition of Leroy Rymer. Dec'r 21, 1855.

Leroy Rymer, aged about 32 years, a witness for complainant, being next duly sworn, deposeth and saith as follows:—

1st Interrogatory by complainant's agent. Please to state where you resided in the years 1842 and 1843.

Ans. With my father, William Rymer, where he now lives on Greasy Creek.

2d Int. by same. Please to state what you know about the cattle kept by Wm. Watkins in the range in those years, as to whose cattle

he kept each year, and whether they were run out of the range in either of those years.

Ans. I do not know of my own knowledge.

3d Int. by same. Did Wm. Watkins tell you about that time that he was keeping cattle for Wm. P. Lea and J. C. Maples?

Ans. I do not recollect that he did at the time he was keeping the cattle; he told me afterwards of circumstances that happened while he was keeping the cattle.

4th Int. by same. Did you, about the time named, see any cattle that appeared to have been run or frightened? and if so, state whose they were, or the circumstances by which you formed an opinion as to whose they were.

Ans. I saw one standing in the creek as I was going down the creek, and paid but little attention to it. I think I was gone below on the creek about two hours, and as I came on back the cow bruit was standing in the creek about the *the* same place, as near as I could tell. It being still in the same place as I came back caused me to notice it, and it seemed to be very tired; and hearing in a few days that Lea's and Maples' cattle were run out of the mountains, I supposed it was one of them.

5th Int. by same. Please to state whether there is a beech tree standing near the spring where Augustine Hopper lived in the year 1842, and where you now live, having on it this inscription: "Laurel Gee, 11th August, 1842;" and state when you first saw it.

Ans. Laurel Gee's name is cut on a beech tree at my spring, the date is the 11th August, 1842; the first time I noticed it was two years ago last August. I now live on Greasy Creek where Augustine Hopper lived in 1842.

6th Int. by same. Please to state when James Glass lived on Isaac Smith's place on Greasy Creek, and how long he lived there?

Ans. He lived there in 1842. He made but one crop there.

7th Int. by same. Did Isaac Cloud and his son, Benjamin F. Cloud, live near Glass' in 1842, and work on the farm with him that year?

Ans. To the best of my recollection they lived on Greasy Creek, about four miles below. I worked some on the farm in laying by corn, and, to the best of my recollection, Ben Cloud worked there the same week that I did.

8th Int. by same. Was that the first year that a crop was made in Isaac Smith's large clearing where Glass lived?

Ans. It was.

9th Int. by same. Where did Anderson Parker move from his home on the Hiwassee River near Carter's Ford?

Ans. He moved from the Carter Ford to where he now lives in the spring of 1842.

10th Int. by same. When was Marcus L. Carrigan married?

Ans. To the best of my recollection he was married in March, 1842.

11th Int. by same. Did you see the cattle herded by Wm. Pace during the year 1846 and 1847 ?

Ans. I did.

12th Int. by same. Did the cattle herded by Wm. Pace in the years 1846 and 1847 roam to any distance from his house ?

Ans. They came frequently about my house, further I can't say.

13th Int. by same. Did you and your neighbors make any objection to Pace's keeping cattle in your vicinity for people residing at a distance? and if any difficulty arose out of such objection, state why and when it occurred.

Ans. As to myself I don't know that I interfered much, there was people who were very much opposed to their keeping the cattle there. There was a difficulty grew out of the cattle being herded there. It occurred in 1847, Wm. Pace and one of the Runnins had a quarrel about it at a log-rolling.

14th Int. by same. Did Wm. Pace herd cattle in the range near his house for any non-residents during the years 1844 and 1845 ?

Ans. Not that I know of.

15th by same. Did you reside so near, and were you so frequently at Pace's house that you would have known whether he herded cattle those years for any persons living at a distance, had he so herded them ?

Answer. I would have known it if he had herded them.

Re-cross-examined by Resp'ts' Sol.

1st Int. by resp'ts' sol. How far is it from where Pace lived in 1846 and 7 to the Watkins camp?

Ans. I think it is something like five miles, I can't state precisely.

2 by same. Were you in the Ducktown settlements about the year 1842 ?

Ans. I was.

3 by same. State whether or not that part of Ducktown, about old John Davis now known as Copper Hill, was thickly settled at that time.

Ans. I cannot tell.

And further this deponent saith not.

ELI RYMER.

Deposition of Leroy Rymer. Dec'r 21, 1855.

Leroy Rymer, aged about 32 years, a witness for complainant, being next duly sworn, deposeth and saith as follows:—

1st Interrogatory by complainant's agent. Please to state where you resided in the years 1842 and 1843.

Ans. With my father, William Rymer, where he now lives on Greasy Creek.

2d Int. by same. Please to state what you know about the cattle kept by Wm. Watkins in the range in those years, as to whose cattle

he kept each year, and whether they were run out of the range in either of those years.

Ans. I do not know of my own knowledge.

3d Int. by same. Did Wm. Watkins tell you about that time that he was keeping cattle for Wm. P. Lea and J. C. Maples?

Ans. I do not recollect that he did at the time he was keeping the cattle; he told me afterwards of circumstances that happened while he was keeping the cattle.

4th Int. by same. Did you, about the time named, see any cattle that appeared to have been run or frightened? and if so, state whose they were, or the circumstances by which you formed an opinion as to whose they were.

Ans. I saw one standing in the creek as I was going down the creek, and paid but little attention to it. I think I was gone below on the creek about two hours, and as I came on back the cow bruit was standing in the creek about the *the* same place, as near as I could tell. It being still in the same place as I came back caused me to notice it, and it seemed to be very tired; and hearing in a few days that Lea's and Maples' cattle were run out of the mountains, I supposed it was one of them.

5th Int. by same. Please to state whether there is a beech tree standing near the spring where Augustine Hopper lived in the year 1842, and where you now live, having on it this inscription: "Laurel Gee, 11th August, 1842;" and state when you first saw it.

Ans. Laurel Gee's name is cut on a beech tree at my spring, the date is the 11th August, 1842; the first time I noticed it was two years ago last August. I now live on Greasy Creek where Augustine Hopper lived in 1842.

6th Int. by same. Please to state when James Glass lived on Isaac Smith's place on Greasy Creek, and how long he lived there?

Ans. He lived there in 1842. He made but one crop there.

7th Int. by same. Did Isaac Cloud and his son, Benjamin F. Cloud, live near Glass' in 1842, and work on the farm with him that year?

Ans. To the best of my recollection they lived on Greasy Creek, about four miles below. I worked some on the farm in laying by corn, and, to the best of my recollection, Ben Cloud worked there the same week that I did.

8th Int. by same. Was that the first year that a crop was made in Isaac Smith's large clearing where Glass lived?

Ans. It was.

9th Int. by same. Where did Anderson Parker move from his home on the Hiwassee River near Carter's Ford?

Ans. He moved from the Carter Ford to where he now lives in the spring of 1842.

10th Int. by same. When was Marcus L. Carrigan married?

Ans. To the best of my recollection he was married in March, 1842.

Cross-examination by Resp'ts' Sol.

Question 1. What time in the year was it you saw the cow standing in the creek?

Ans. I am not able to tell.

2d by same. Was the weather hot or cold?

Ans. I don't think the weather was *cold*, but I cannot say whether it was hot or not, or whether it was in the spring or summer.

And further deponent saith not. LEROY RYMER.

Deposition of Wm. Rymer. Dec'r 21, 1857.

William Rymer, aged about 64 years, a witness for complainant, being next duly sworn, deposeth and saith as follows:—

1st Interrogatory by complainant's agent. Where did you reside in the year 1842?

Ans. On Greasy Creek, about three miles from its mouth, where I now reside.

2d Int. by same. If you know anything of the cattle belonging to Wm. P. Lea, the complainant, and J. C. Maples being run out of the range when herded by William Watkins, please to state what you know about it.

Ans. I expect I saw three of them come by my house at the time they were run out; it was early in the season of 1842, the precise time not recollected. I think it was in 1842, from the birth of one of my children, on the 27th April, 1842; also from a horse swap I made with Benedict Ellis. Ellis swapped in order to get a horse to ride to Marcus L. Carrigan's wedding. It was the year James Glass lived on Isaac Smith's land on Greasy Creek.

3d Int. by same. Were the cattle returned to the range after they were run out, and did they remain undisturbed after that, and why were they not disturbed afterwards?

Ans. I do not recollect.

4th Int. by same. Please to state whether you have recently seen a beech tree standing near the spring where Augustine Hopper lived in the year 1842, bearing this inscription: "Laurel Gee, August 11th, 1842."

Ans. I saw it last Sunday.

Cross-examination by Resp'ts' Sol.

Ques. 1st. Was your son born before or after you saw the three cattle running out of the mountains?

Ans. I cannot say whether it was after or before.

2d by same. Were the cattle poor or were they in good order?

Ans. They made no halt, they kept right on, and I did not notice as to that.

3d by same. Did you know whose cattle they were?

Ans. Not at that time; I afterwards heard and supposed they were Lea's cattle.

4th by same. Do you state it was in 1842, from your recollection of the date, or do you rely upon what you have been told by others?

Ans. No, sir; my best recollection is, it was in 1842. What Mrs. Dodson told me helped me some.

And further this deponent saith not.

his
WILLIAM × RYMER.
mark.

Nov., 1856.

Robert P. Smith, aged about 40 years old, next duly sworn, says:—

1st Interrogatory by complainant's agent. If you know anything about any cattle being herded in the range by one William Watkins, please to state whose cattle they were, where herded, by whom herded, and when so herded, stating the circumstances by which you came to such knowledge.

Answer. I don't have any knowledge by whom the cattle were herded. I recollect that cattle were herded in about Ducktown, which were said to be Lea's cattle. This was in the year 1842. Some two or three of us generally went out a hunting after we got our crops laid by, and they told me about the cattle when we were out there. This is the way I come to know about the cattle being there.

2d Int. by same. Please to state where you staid when you were hunting, as spoken of in your last answer, and name the persons who were hunting with you.

Answer. We staid at Henderson Smith's (my brother), in Ducktown, and Charles A. Pickens and James Rutherford were with me sometimes. Pickens was with me every time, and Isaah Smith went with me one time.

3d Int. by same. Please to state, as nearly as you can, where Henderson Smith resided in the year 1842.

Answer. He lived about three miles from the Ocoee River on a little creek, but I don't recollect the name of it. The creek run down through Ducktown, and probably some portion of it run from Turtletown. There was a large mountain on this side of it.

4th Int. by same. How far, and in what direction did Henderson Smith live from where Elias Davis then lived?

Answer. As well as I can recollect, Henderson Smith lived about a northeast course from Elias Davis', and said to be three miles from Davis'.

5th Int. by same. If hunting about Ducktown, you saw signs of cattle having been in the range there, and any signs of their having been unusually disturbed, please to state where you saw such signs, which they were, and whose cattle made them, giving your informant as to whose cattle they were.

Respondent's solicitor excepts to the competency of the question, because it seeks to introduce declarations that may have been made

by third persons as to things of which the witness has no personal knowledge. ROWLS, *Soli't.*

The above exception is overruled.

J. H. GANT, *Com'r.*

Answer. I saw some signs of cattle having been on the mountain, and we all met at a certain place, and my brother showed us where the cattle had run, and he up and told us the circumstance, and said some person had caught a yearling and took a bear skin and fastened it on some way or other so as to run the cattle off, so we were told. My brother said they were Lea's cattle, but did not mention any name, but just said Lea's cattle. The signs we saw were just signs of cattle having been there, and saw some cattle, but we did not know whose they were.

6th Int. by same. Please to state whether your brother, Henderson Smith, is now living.

Answer. My brother, Henderson Smith, is now dead. He has been dead about four years. He went to Missouri and died there.

7th Int. by same. By whom did you understand that the bearskin was put upon the yearling?

Answer. I have no knowledge. There was no names mentioned.

8th Int. by same. By the Lea mentioned by your brother, did you or did you not understand the Lea who then resided on the Savannah farm?

Answer. Yes, sir, that was my understanding, it was the Lea who lived on the Savannah farm.

9th Int. by same. Please to state what further occurred, if anything, in consequence of the cattle having been run out of the range.

Answer. The cattle were said to be scattered very much, and some they said they never got. This I heard after I went home. I lived in about six miles of Lea's.

10th Int. by same. What cause was assigned for running the cattle out of the range?

Answer. I don't recollect that any cause was assigned.

11th Int. by same. Did or did not Henderson Smith tell your party when he showed you where the cattle run, that Lea had entered lands up in that region as a claim to the range?

The above question is excepted to or incompetent on the ground of being the mere declaration of Smith.

The above exception is overruled. J. H. GANT, *Com'r.*

Answer. Mr. Smith told us that Lea had entered land there, but did not tell us when.

Cross-examination.

Question. Was it on the east or west side of the mountain, where Henderson Smith showed you the cattle had been run?

Answer. It was on the northwest side of the mountain where

Smith showed us the cattle had run. I mean the side of the mountain next to Benton, it being this side of the mountain.

Question. If I understand you, it was not, then, on the side of the mountain towards Ducktown.

Answer. No, sir.

Question. Do you know where Copper Hill is, in Ducktown, or in what part of Ducktown the land in dispute lies?

Answer. No, sir, I don't know.

Question. You are not, then, able to state how far the place where the cattle were said to have been run from to the land in dispute?

Answer. No, sir, I don't know how far it is.

Question. Did you see, on the ground, any break up of the surface of the earth, or marks on it, indicating that cattle in numbers had run with speed along there?

Answer. Yes, sir, we saw where the cattle had run and tore up the ground, and tore down vines and weeds, on the side of the mountain.

Question. From the appearance of the earth, and of the vines and weeds, had the running of the cattle occurred shortly before then?

Answer. No, sir, it had been some time before then; the sign was old.

Question. What season of the year was it in, in which you were there, of which you are speaking?

Answer. It was in the month of August.

Question. The vines and weeds which were torn, were they or not of that spring or summer's growth?

Answer. Yes, sir, I suppose they were. They were the growth of that year.

Question. How far did you live from Caswell Lea, on the Savannah farm? and do you, of your own knowledge, from seeing the cattle after you returned from the mountain, in August, know that any of the cattle of Lea's, run out from the mountain, were sent back to the mountain? State what you may know of this, as occurring about that time.

Answer. I lived about six miles from Lea's, on the Savannah farm. I have no knowledge of the cattle being sent back after they were run out of the mountain.

Question. After you came back from the mountain, in August, do you know of Lea's being engaged in hunting up any of the cattle?

Answer. No, sir, I don't know anything about him being engaged in hunting up any cattle.

Re-examination.

1st. Int. by complainant's agent. Please to state whether you understood, from Henderson Smith, whether Lea's cattle ranged around his own farm, and others of his neighbors.

Answer. No, sir, I did not understand from him whether Lea's cattle ranged round or about his own farm and others or not.

2d Int. by same. Please to state how you are enabled to fix the date when the cattle were run out as in 1842.

Answer. All the way I can fix the date is by some dealings between me and my brother. I was owing my brother some eighteen dollars, and my brother came in from Illinois, and gave my brother Henderson an order to me for it, and I find the order is dated in 1842.

Question. You will please state if the vines you speak of being torn up were pea vines or not, and state if at that time pea vines were not plenty on that side of the mountain.

Answer. I did not go down the mountain to see what kind of vines they were. I could see the opening down the mountain where the cattle had torn the vines about. There were pea vines and all sorts of vines there, and there were all sorts of weeds there, too.

Question. Are you a farmer by pursuit? How long did you live in the neighborhood of the Savannah farm? From your experience and observation, do you believe that farmers in any —— since you have lived in East Tennessee, have planted their corn crop so early as the 5th of March? What is the usual corn planting time?

Answer. I am a farmer by pursuit, and lived in the neighborhood of the Savannah farm two years. I have no recollection, since I have been a farmer, of any man, in my knowledge, planting his corn as early as the fifth day of March. From the first to the fifteenth of April is the usual time of planting corn in this country. One man in my neighborhood plants in March, but not so early as the fifth of March. In the early settlement of the Hiwassee purchase, farmers planted earlier than they do now. The seasons have changed since then, and the springs are later than they were then. We could raise cotton in the early settlement of the Hiwassee purchase.

And further this deponent saith not. ROBERT B. SMITH.

Deposition of Nathaniel Stuart for Comp't. Jan'y, 1856.

Nathaniel Stuart, Jr., aged about 42 years, sworn as aforesaid, deposeth as follows:—

1st Int. by complainant's agent. Please to state where you lived in 1843, when you moved there, and how you fix the dates.

Ans. I lived in 1843 some six miles in a north direction from Copper Hill and Sam'l McJankin's house. I came there the 16th day of February, 1843. I put it down the day I moved there, the day I took the lease.

2d Int. by same. If several persons were at your house shortly after you took possession of Sam'l McJankin's house, when a conversation took place about certain cattle being run out of the range, please to state who were present, whose cattle were said to have been run out of the range, when they were run out, and why.

Ans. In about five days after I moved to that house, there were Mr. Shamblin, Mr. Rymer, Warren Dodson, and Mr. Hannah, and

another man, I don't recollect his name, that were there that night; they were laughing about the circumstance that should have taken place the year before, about a bearskin being put on some stock cattle of some kind. It was so supposed to be Mr. Lea's cattle and Maples'. I do not recollect the cause of their being run out.

3d Int. by same. Please to state what business brought the persons named to your house.

Ans. They were viewing out a road across the mountain for a mail route, and they came to stay all night at my house.

4th Int. by same. Did you understand that the people living upon this side (east) of the mountains were opposed to those living below the mountains sending their cattle to the range in this vicinity?

Ans. Yes, sir; that was the rumor among the people.

5th Int. by same. Did not the Taylors, living in the edge of North Carolina, a few miles from you, threaten to shoot any cattle that might be sent up from the flat woods into the mountain range?

Ans. Yes, sir; that was the talk through the settlement, that such talk should have passed.

Resp'ts by their sol. excepts to the last two questions and answers, for the same reason assigned in their exceptions to like questions propounded to John Jinkins. J. B. COOKE, *Sol.*

And further deponent saith not.

NATHANIEL STUART, Jr.

Alfred G. Weaver's Deposition. Oct., 1855.

Alfred G. Weaver, aged about thirty-seven years, a witness for complainant, and after being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:—

1st Int. by complainant. Are you acquainted with Wm. P. Lea, the complainant in this cause?

1st Answer. I am.

2d Int. by same. Where did you reside in the year the price of unrented lands in the Ocoee District fell to one cent per acre?

Answer. I lived on what is called the Buffalo farm on the south side of Hiwassee River *opposite* the upper end of the Savannah farm, just below the gap of the mountain where said river leaves Bean Mountain.

3d Int. by same. State if you can, whether complainant ever kept cattle in the range on Bean Mountain, referred to in your last answer, and whether he kept them on that mountain in the year named in my second interrogatory.

Ans. Mr. Complainant Lea kept them there in 1840 and 1841, and in the year 1842 he kept them near the foot of the Frog Mountain.

4th Int. by same. Please to state any circumstance or record made at the time, by which you are enabled to fix the dates given in your last answer.

Ans. On the 25th of May, 1842, I lay on the top of Bean's

Mountain, on the next night was the birth of one of our sons, by which circumstance I am able to give the date, though I have no written record of his age.

5th Int. by same. Please to state who were in your company on the night of 25th May, 1842, and at what point on Bean Mountain did you tie.

Ans. John N. Taylor and Sam'l Wear were with me, and the place was near Lea's lick log, where complainant Lea was in the habit of herding his cattle the two years previous.

6th Int. by same. Please to state whether the lick log named in your last answer was near a branch or stream of water.

Ans. It was in about fifty yards of a branch on the mountain.

7th Int. by same. What knowledge had you of the fact that complainant did not keep his cattle on Bean Mountain at the date named by you in 1842?

Ans. I was out frequently that summer salting horses, and William P. Lea, complainant, had no cattle there at Lea's lick log.

8th Int. by same. How did you know where complainant kept his cattle in the year 1842?

Ans. By the general information of the people, he kept them near the foot of the Frog Mountain.

9th Int. by same. Please to state who herded the cattle for complainant in the year 1842, and whether you understood them to be herded in the Ducktown range.

Ans. My understanding was that William Wadkins herded his cattle in the year 1842, and they were herded near the foot of the Frog Mountain, whether on this or the other side of the said mountain I know not, but most likely on this side of the Frog Mountain.

Int. 10th by same. Please to state whether you know anything about the cattle of complainant being run out of the range during the year 1842; if anything, say what.

Ans. From my own knowledge I know nothing about it; only from general rumor it was said they were run out that year.

11th Int. by same. Please to state whether complainant drove his cattle by your house to the range in the year 1842, and whether you saw them passing; if aye, state the date of the month and day of the month as nearly as you can.

Ans. The second time that complainant, Lea, drove his cattle to the range in the spring of 1842, after as I learned they had been run out, he drove them past my house, though the trail was about two hundred yards from my house. I was in the field at work, and saw complainant, Lea, pass with cattle—some I knew to be ——. It was not very late in April when he passed on.

12th Int. by same. Please to state, if you know, whether the cattle of complainant were again driven or run out of the range during the grazing season of 1842.

Ans. They were not, to my knowledge.

13th Int. by same. Please to state, if you can, where the cattle belonging to the Savannah farm were grazed during the year 1843.

Ans. I can't state where they were kept, but my information was that they were kept on the Chestnut Mountain, on the north side of the Hiwassee River, in 1843.

Cross-examination.

1st question by solicitor of respondents. How far is it from the Savannah farm to the Frog Mountain, how far to the Chestnut Mountain, and how far to Bean's Mountain from the same point?

Ans. I *supose* from the *senter* of the farm to the Frog Mountain is about fifteen miles; to the Chestnut Mountain about three miles; to the top of the Bean Mountain at Lea's lick-log about three miles and a half.

2d by same. Do you know where Copper Hill, the land in dispute, lies; if yea, how far is Copper Hill from the said farm?

Ans. I don't know the distance exactly, but *supose* it to be from twenty-six to twenty-eight miles by the Ducktown trail, known as the mail route.

And further this deponent saith not.

A. G. WEAVER.

Deposition of Burgess Witt. Dec. 21, 1855.

Burgess Witt, aged 55 years, a witness for complainant, being next duly sworn according to law, deposeth and saith as follows:—

1st Interrogatory by complainant's agent. If you know anything about the cattle of Wm. P. Lea and Calvin Maples being run out of the range where herded by Wm. Watkins, please to state when that event occurred, giving any circumstance by which you are enabled to fix the date.

Ans. I moved off in March, 1842, and came back in the fall of the same year, and when I came back I understood that the cattle had been run out by a bear skin. I ascertain the date by the date of a note I have, which was executed a few days before I moved off. I now show the note to the commissioner, bearing date 10 March, 1842.

2d Int. by same. From what place did you move off in March, 1842?

Ans. I moved from Loss Creek to Bradley County. Loss Creek lies east of Watkins', and runs into Hiwassee at the Big Island, on the south side of the river.

3d Int. by same. By whom was you informed about the cattle being run out by a bear skin?

Ans. By William Watkins, Harry Ellis, and divers others.

4th Int. by same. By whom did you understand that the cattle were run out of the range?

Ans. They said they supposed it was done by Wm. R. Witt, a

cousin of mine, Mirada Yancey, who lived on the Elias Davis property in Ducktown.

Resp'ts, by their sol., except to the last two questions and answers, because they introduce mere hearsay as evidence.

J. B. COOKE, *Sol.*

And further deponent saith not.

his
BURGESS + WITT.
mark.

William M. Biggs' Deposition.

Thursday, October 25, 1855. Met pursuant to adjournment.

William M. Biggs, aged about fifty-eight years, being duly sworn on the "wholy" Evangelists of Almighty God, deposeth and saith as follows:—

1st Interrogatory by complainant's agent. Are you acquainted with the parties to this suit?

Ans. I know complainants and most of respondents.

2d Int. by same. Please to state how far you reside from the Savannah farm, formerly belonging to Caswell Lea, and how long you have resided there.

Ans. I live about two miles from Savannah farm, formerly owned by Lea. I have lived there probably over twenty years.

3d Int. by same. Please to state whether the complainant resided on the Savannah farm about the year 1842.

Ans. I cannot state at what time he resided there. My impression is that he did.

4th Int. by same. Do you know whether the complainant and Col. J. C. Maples were in the habit of herding their cattle together during the grazing seasons, whilst complainant lived on the Savannah farm?

Ans. I think they were.

5th Int. by same. If you have ever seen the cattle of complainant and Col. Maples grazing together in the range, please to state where, and when, as nearly as you can.

Ans. I have seen the cattle of Mr. Lea and Mr. Maples in the mountains on more than one occasion, but do not recollect as to time, except in 1845.

6th Int. by same. Have you ever seen the cattle of complainant grazing on the Bean's Mountain, and also at a cabin occupied by William Watkins, near the Frog Mountain?

Ans. I have seen Lea's cattle divers of times in both of those places.

7th Int. by same. State what you may know in regard to the cattle of complainant being driven from their grazing grounds at Watkins' cabin referred to in your last answer.

Ans. Of my own personal knowledge, I know nothing. Public

rumor was that some persons sewed a bear skin upon a calf, and run them out of the range.

Resp'ts by their sol. except to so much of the above answer as details public rumor as being mere hearsay evidence.

J. B. COOKE, *Sol.*

8th Int. by same. Please to state precisely where you saw the cattle of Lea and Maples in the range in the year 1845, giving circumstances by which you determine that date, and also any records you may have bearing on the date.

Ans. I saw the cattle of Maples, and I believe Lea's cattle were with them at Larkin Rutherford's, in the Springtown District, north of Hiwassee River, in 1845, in July or August. In that year Mr. Caswell Lea and myself drove cattle in partnership, and from the records and dates made in relation to said partnership and other dates, I can ascertain the time the cattle were there.

9th Int. by same. Please to state whether you now have present the memorandum book in which you entered the various lots of cattle purchased in partnership with Caswell Lea, in the year 1845; and whether said book contains an entry to this effect: "1845, Aug. 15, Maples' cattle, 12 head, at $8.50," and also state whether the said book is open to the inspection of all the parties present.

Ans. I have; there is an entry to the effect above referred to, and the book is open to the inspection of all persons present.

10th Int. by same. Please to state what other cotemporaneous memoranda you may have to enable you to fix the date above referred to, and whether they are open to the inspection of the parties present.

Ans. I have a pocket book purchased whilst absent selling the cattle, in which is entered the date of purchase. It is open to inspection, dated Oct. 28, 1845.

11th Int. by same. In a previous answer, you speak of the cattle of Maples, and you believe those of Lea as being at Larkin Rutherford's in the year 1845; please to state which of the brothers Lea you understood to be the owner of the cattle at that time.

Ans. Caswell Lea.

12th Int. by same. When did Caswell Lea bring his family to reside on the Savannah farm?

Ans. I cannot say. It was before we drove the cattle.

13th Int. by same. Did the family of Caswell Lea reside on the Savannah farm as much as one year before you started with the drove of cattle in 1845?

Ans. I think they did, perhaps more.

14th Int. by same. State as nearly as you can, when the complainant ceased to reside on the Savannah farm?

Ans. I cannot say. He was a young man, sometimes there, and sometimes away.

15th Int. by same. Please to state whether the complainant went

with you and his brother, Caswell Lea, with your cattle to market in the year 1845.

Ans. He went with us to Virginia with the cattle.

16th Int. by same. Please to state whether you were in the habits of intimate and friendly intercourse with the complainant and his brother, whilst they resided on the Savannah farm.

Ans. I was.

17th Int. by same. Have you any recollection of complainant having resided at the Savannah farm after your return from Virginia, in the year 1845?

Ans. I have no distinct recollection whether he did or not.

18th Int. by same. Please to state whether you have ever entered any lands in the mountain east of your residence, for the purposes of securing range for your cattle; and if so, please to state when you made such entries, how much you so entered, and at what price, referring to the grant you now have in your hand.

Ans. I have entered land east of my residence for the purpose of securing range for my cattle, from a grant in my hand, I made an entry on the 5th of April, 1842, for timber and the purpose of "grazing." I also made other entries afterwards, for the specific purpose of grazing. I do not recollect how much. I suppose it was entered at one cent per acre.

19th Int. by same. You have just stated that you made entries of lands for the specific purpose of grazing; please to state where such lands lie, and what particular reasons indicated you to make such entries.

Ans. They lie across the top of Bean's Mountain on the waters of Greasy Creek, some 8 or 10 miles from my residence; the reason I had for doing so, the mountain people complain of our people trespassing on their rights in driving stock there.

20th Int. by same. Were your cattle ever run out of the mountains by the settlers in the mountains; and if aye, why were they so driven out?

Ans. Of my own knowledge I can't say; report said they were driven out, and for that reason I made them entries.

21 Int. by same. Have your cattle been run or driven out of the range by the mountain people since you made entries of land there?

Ans. Not to my knowledge.

22 Int. by same. Please to state whether you entered in the year 1842 a piece of land lying in the Ducktown region, described by the grant now in your hands, as being in range 5 E. fractional township 4, section 9, being the east half of the northeast quarter of said section; and if aye, state whether it lies near the chief copper mines in Ducktown, and whether it is supposed to contain copper ore.

Ans. I entered said piece of land on the 29th January, 1842, as appears from the grant now in my hands. It lies near the principal copper mines in Ducktown, and is supposed to contain copper ore.

23d Int. by same. Please to state whether the land owned by you

in Ducktown and referred to in the last question and answer, is or is not surrounded by valuable copper mines.

Ans. It is.

24th Int. by same. Please to state whether you have been frequently in the Ducktown settlement since the year 1842, and during several different years, engaged in canvassing for votes and other purposes.

Ans. I have; I was canvassing there in 1849.

25th Int. by same. When in Ducktown in 1849, did you know where was the land last before alluded to?

Ans. I was shown by a friend of mine by the pointing of the finger where the land was; that was the first time I ever saw it that I know of.

26th Int. by same. When did you first learn that the land last alluded to was probably of great value for its copper ore?

Ans. My recollection is that I never had any confidence in it till about 12 months ago; I heard others speak of it about two years ago.

27th Int. by same. When did you first hear that copper ore had been found, in valuable quantity, in Ducktown?

Ans. I suppose in 1849 or 1850.

28th Int. by same. Did you have any examination of your lands in reference to copper ores, in consequence of what you heard of such being found in Ducktown? if so, when?

Ans. I had an examination made some 12 or 18 months ago.

29th Int. by same. Please to state what public offices of trust or honor you may have held in the county where you reside.

Ans. I was once Clerk of the Circuit Court of this County; I was a member of the Legislature from this county in 1849 and 50, and was Lieut.-Col. of militia.

30th Int. by same. If you are acquainted with the general character of complainant P. Lea, please to state what it is.

Ans. I suppose that I am; I have known him a great while; from the acquaintance I have with Mr. Lea I view him as an honest and upright citizen; I have never known or heard anything else.

31st Int. by same. Please to explain why you do not write your own answers in this deposition.

Ans. Not being in a habit of writing, but working in the field, I believe others could do it quicker and better than myself.

Respondents by their sol. except to all of the above deposition which relates to the entries of land by the witness, his objects in doing it because the same is immaterial and irrelevant to the matters in issue in this cause. J. B. COOKE, *Sol.*

Cross-examination by Resp'ts' Sol.

1st Int. State if in the memorandum book before referred to, which you kept while driving cattle in partnership with Caswell Lea, there is not an entry or memorandum in these words: "Lea's cattle, 2

head." Also state if these two head of cattle were not all the cattle of his own which Caswell Lea put into that drove.

Ans. There is such an entry, and I believe they were the only cattle Lea put in the drove of his own stock or raising.

2d by same. For what purpose did you enter the eighty acres of land in Ducktown before referred to in this deposition, and have you claimed said land and paid the taxes on it ever since.

Ans. I entered it for the purpose of speculation strictly speaking; believing that the lands in Ducktown would ultimately rise, and that I could sell it. I have claimed the land all the time and paid the taxes all the time with the exception of one year when I considered the land valued too high by the commissioner of revenue.

3d by same. Please state if the complainant, William Pinckney Lea, is not a close saving man and one that takes care of his property and looks closely after his interests.

Ans. So far as I know he is a prudent managing man in his domestic matters, and as close and saving as other men, but not more so that I know of.

And further this deponent saith not.

WILLIAM M. BIGGS.

Deposition of Edmund D. Cameron. Dec. 21, '55.

Edmond D. Cameron, a witness for complainant, aged about 39 years, being next duly sworn, deposeth and saith as follows:—

1st Interrogatory by complainant's agent. Please to state where you lived in the year 1843.

Ans. I lived near the Savannah farm.

2d Int. by same. If you know where the cattle belonging to the Savannah farm were grazed that year, please to state where, and how you know the fact.

Ans. I and Mr. Hawkins frequently went out driving, and I frequently saw some of Mr. Lea's cattle on the but of the Chestnut Mountain. I do not know whether he kept them there, or whether they went there; the cattle were there.

3d Int. by same. Did you know the cattle that you saw on the Chestnut or Gee's Mountain to be the cattle belonging to the Savannah farm?

Ans. They were Lea's cattle.

4th Int. by same. At what time of the year did you see Lea's cattle on the Chestnut Mountain?

It was at several times during the summer, and further deponent saith not.

EDMOND D. CAMERON.

Depo. of Berry Dodd for Compl't.

Berry Dodd, aged about 46 years, being next introduced and sworn, deposes and says:—

1st Int. by complainant's agent. State where you lived in years

1844 and 1845, giving reference to records and circumstances by which you recall dates.

Ans. I lived on Tower Creek, above Springtown, during those years where the cattle was kept.

2d Int. by same. To whose cattle do you allude in the last?

Answer. I allude to the cattle of William Pinckney Lea's and Calvin Maples.

3d Int. by same. By whom were the cattle of Lea and Maples herded in the range in 1844 and 1845?

Answer. By Larkin Rutherford.

And further this deponent saith not.

his
BERRY + DODD.
mark.

Nov. 1856.

Moses C. Ferguson being next sworn, deposeth and says:—

1st Interrogatory by G. E. S. Russweern, sol'r for compl't. Please state your age, residence, the length of time you have resided in this (Polk) county, and what you may know in relation to cattle being herded in the mountains by William Watkins, and about their being driven out of the mountains, and from whom you obtained your information.

Answer. I am fifty-three year of age. I live six miles south of Benton, Polk County, Tennessee. I *kno* nothing about the cattle being driven from the mountains of my *oan vilage*. I *doo* not know Mr. Watkins, nor neither *doo* I recollect that I ever heard whose cattle was run from the mountains. My information was from Jesse Lemins. He was a resident of Ducktown about the year of 1841, one or two, and he told me *thear* was catel run from back of the mountains some*whear*, I mean east of the Frog Mountain.

2d Interrogatory by the same. What reason did he assign for driving the cattle off, and what means did he say were adopted to run them off, and by whom did he say they were run out of the country?

Answer. Lemons stated that some of his neighbors said the owners of the *catle* owned no land there, and that the *catle* should not stay *theare*, and some of them put a bear skin on one of the small *catle*, and they run off and left the range.

And further this deponent saith not.

MOSES C. FERGUSON.

Deposition of Nelson Grigg. Dec. 21, 1855.

Nelson Grigg, a witness for complainant, aged about 37 years, being next duly sworn, deposeth and saith as follows:—

1st interrogatory by complainant's agent. Please to state where you lived in the years 1842 and 1843, giving circumstances by which you fix the dates.

Ans. In 1842 and 1843 I lived on the Savannah, belonging to Caswell Lea at that time. In 1844 my father died, and that year I rented land of the widow Fore, on Conassauga Creek; that was the first crop I made after I went from the Savannah.

2d Int. by same. If you know where the cattle belonging to the Savannah farm were herded in the range during the grazing seasons of those years, please to say where and by whom.

Ans. All I know about that is what I heard Mr. Lea and Mr. Maples say about it. I know they had cattle out, and my understanding was they were on the south side of the river, and that Watkins was to attend to them in 1842.

3d Int. by same. State, as nearly as you can, where the cattle belonging to the Savannah farm were kept in the year 1843.

Ans. I do not know within myself about it only from hearsay.

4th Int. by same. Did you cultivate land on the Savannah farm, through which the road from complainant's residence to the Gee or Chestnut Mountain passed?

Ans. I did.

5th Int. by same. Did you reside near that road?

Ans. It was some half a mile from the road.

6th Int. by same. During the grazing season of 1843, did you see persons belonging to the Savannah farm driving cattle to and from the range, and going out to salt them?

Ans. I cannot say that I saw them driving them out or from it. I saw Lea and Maples going out and coming back from salting their cattle, at least they said that was their business; sometimes they were gone three or four days, and sometimes nearly a week, and sometimes not so long.

7th Int. by same. Did you see them at any time go out to salt the cattle, and return the same day?

Ans. I think not. I do not recollect that I did; they might have done it, though.

8th Int. by same. Did any of the persons attending to the cattle in the range in the year 1843, give you to understand at the time that the cattle belonging to the Savannah farm were in the Gee or Chestnut Mountains?

Ans. I do not think they did.

9th Int. by same. Were complainant's cattle kept on the south side of the Savannah River during both the years 1842 and 1843, or only one of those years?

Ans. I think they were kept there but the one year, in 1842.

10th Int. by same. Please to state whether the going out to the range, and coming back by Lea and Maples, mentioned in your answer to my 6th question, took place in 1842, or in 1843.

Ans. It was in 1842.

11th Int. by same. Did you hear from general rumor, about the time Watkins kept cattle for Lea and Maples, south of the Hiwassee River, anything about their cattle being run out of the range?

Ans. I think I heard something about it. I can't state anything particular about it; and further deponent saith not.

NELSON GRIGG.

Samuel McJunkin's Depo. Jan'y, 1856.

Samuel McJunkin, aged about 61 years, witness for complainant as aforesaid, deposeth as follows:—

1st Int. by complainant's agent. State whether you saw any cattle in the range in the mountains drained by Brush Creek, in the year 1843, and whose they were.

Ans. I saw no cattle. I saw cattle sign. I got in company with Wm. Watkins, a man by the name of Maples, and Thomas Galbreath. I kept in company with them until we came in hearing of the bell, they stated that they were their cattle. The bell was a little turned on this side of the top of the mountain, on some spurs that made down to a creek called Guffie's Creek, that enters into Brush Creek at Thomas Kimsey's. They could see all over Ducktown distinctly from where the cattle were.

2d Int. by same. Please to state where Wm. Elder lived in 1842.

Ans. As well as I recollect, he lived where William Kimsey now lives. I do not recollect exactly the year, I think it was in 1843. Kimsey lives about 2½ miles from the mouth of Brush Creek on the creek.

3d Int. by same. If you know where Wm. Watkins had a cabin near the Ocoee River for the purpose of shelter whilst herding cattle, please to state, as nearly as you can, how far from that cabin to where Wm. Elder lived, in a direct line.

Ans. I should suppose it about seven miles at a rough guess. I know all the mountains.

4th Int. by same. By what circumstances are you enabled to recall the date when you saw Maples and Gilbreath hunting their cattle in the range?

Ans. It was by my shop books kept in 1842, in the latter *in the latter* part *part* of 1842 or first of 1843—I got my shop burnt up. To the best of my knowledge and recollection it was in 1843. I married in 1843; on hot house, and lived there that year, and the bears were killing my stock, and I was out hunting bears when I came across Maples and Galbreath hunting their cattle.

5th Int. by same. Do you recollect that John F. Hannah, Wm. Rymer, and the Sheriff Shamblin were at your house together in the year 1842, before your shop was burnt?

Ans. I do, it was before my shop was burnt.

6th Int. by same. If you have heard about cattle belonging to Maples and others being run out of the range by a bearskin put on one of them, please to state from whom you first heard it.

Ans. I have heard it, and to the best of my recollection William Rymer told me first; I have since heard it from others. I do not recollect at what time he told me; it was not the time he came first

to my house. It might have been the second time, or at some time he come to get work done.

7th Int. by same. If the grass comes earlier on one side than the other side of the mountain next west of Brush Creek, please to state on which side it is earliest, and by how long.

Ans. I don't think there is any difference.

8th Int. by same. What portion of country was commonly understood by the early settlers above the mountains as embraced in the Ducktown region?

Ans. To my understanding it would take a part of North Carolina, a little of Georgia, and extend down as far as Kerbey's, and the Little Frog Mountain, and up near to where I live, to the dividing ridge between Ducktown and Turtletown.

9th Int. by same. Were the early settlers in Ducktown in the habit of packing corn across the mountains from the flat country below, and especially from the Big Savannah or Hiwassee River?

Ans. They were, and got it where they could, some from there, and some from elsewhere.

10th Int. by same. Had you been living in 1842 where Watkins had his camp for herding cattle, and had gone down to buy corn at the Big Savannah, and had been there asked where you lived, what answer would you have made?

Ans. I suppose I should have said in the mountains near Ducktown.

Cross-examination.

Question by resp'ts' sol. Were you in the habit of hunting in the mountains west of Ducktown in the year 1842?

Ans. I was.

By same. Did you see any cattle, or the sign of any cattle, in those mountains in 1842?

Ans. I did not.

By same. Do you know in what year Watkins' camp was built for the purpose of herding cattle.

Ans. I do not. I passed there in gathering up the Indians in 1837–8 or '9. I cannot say when the cabin was built.

Re-examination.

1st Int. by complainant's agent. How far, and in what direction is the Watkins camp to which you allude, from Rock Creek, measuring along the old Indian trail?

Ans. It is west of Rock Creek, and from the idea I have, some three or four miles.

And further this deponent saith not.

SAMUEL McJUNKINS.

Deposition of Caswell Lea. Sept. 1855.

Caswell Lea, aged about 53 years, summoned on behalf of complainant, being next sworn, deposes as follows:—

1st Interrogatory by complainant. Please to state the relationship

between yourself and Wm. Pinckney Lea, the complainant in this cause; and state what were your connections in business from the year 1839 to the year 1845, referring to such written memoranda or other papers as you may possess, made during that time, to aid your memory.

Answer. William Pinckney Lea is my brother. In January, 1839, we agreed upon a partnership on the business of farming on my farm on Hiwassee River, known as Hiwassee Old Town; he commenced business there in the latter part of January, 1839. We were to be equal in expenses in the business and divide the profits equally; we continued in business together until 1st July, 1843, we then came to a settlement, and I paid him $614.77½ as a balance due him for his interest in the business, as appears in the origin settlement now before me. He continued in my service until the 16th day of December, 1845, and then quit my service for which I paid him $250 as appears from a settlement now before me, dated October 9, 1847.

2d Int. by same. Where did you reside during the time named in the foregoing answer?

Answer. I resided in Dandridge, Jefferson County, Tennessee until some time about the 1st June, 1844, when I left that place and reached the said farm with my family on the 16 day of the same month, with the view of making that my home.

3d Int. by same. Please to state whether there were cattle kept on your farm at Hiwassee Old Town, which it was the habit of yourself and brother to keep in the range in the adjacent mountains during the summer time.

Answer. We had cattle on the farm in the winter and on the mountains in the spring and summer season.

4th Int. by same. State as nearly as you can where the cattle alluded to in the last question were kept during the spring and summer seasons of the years 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846 and 1847, referring to books and papers before you to refresh your memory.

Answer. We had but few cattle on the farm in the spring and summer of 1839; my recollection is he only brought down with him some milk cows and calves which were kept on the farm for use. In 1840 and '41 they were kept over on the south side of Hiwassee River on what is called Chilhowee or Bean's Mountains. We salted and attended to them ourselves in 1842 and 1843. One of those years William Wadkins kept them on the south side of said river, and the other we kept them on the Chestnut Mountain on the north side of said river; which of those years they were kept by Watkins I cannot say certainly. I well remember that Doctor Hawkins and myself went up to salt them and take a hunt in the summer that they were up on the Chestnut Mountain, and in July, 1843. William P. Lea and I had a statement; I have nothing by which I can refer to refresh my memory of being at the farm in the summer of 1842. In the summer of 1844 and '45, they were kept by Larkin Ruther-

ford on Loney's Creek on the north side of said river, as appears from a memorandum of the description of the cattle now before me in my handwriting, as also appears from the dates or quantities of salt sent up to him for the use of the cattle, which is now before me. In the year 1846 and '47 William Pace kept them on the south side of said river, about three miles from Elisha Dotson, as appears on my account book, so far as relates to 1847, for the year 1846, my recollection is, I paid him in money.

5th Int. by same. In your last answer you say that you hunted with Dr. Hawkins in the mountains where the cattle were kept in the summer of 1842 or 1843, and that you have a written memorandum before you, which shows that you were at the Savannah farm in July, 1843. Please to state whether it was usual for you to be at the farm during the summer season, and also whether you have any data to show at what time, if any, you were at the farm in the year 1842.

Answer. It was not usual for me to be at the farm in the summer season; I was at the farm in February, 1842, transacting business with Doctor Thos. A. Anderson in relation to giving him the description of my lands to sell in European market, the dates of which is the 17 of Feb'y, 1842.

6th Int. by same. Please to state whether you had any correspondence with the complainant about entering lands in the Ocoee District when the price of lands should fall to one cent per acre, and if any, give the date of such correspondence, fixing the date by any papers in your possession; and also state the purport of such correspondence, producing the original letters, if in your possession.

Answer. When at the farm with Dr. Anderson, my recollection is, that I instructed Wm. P. Lea, or we agreed, that when the lands in Ocoee District fell to one cent per acre he was to go down to the Land Office and make some entries on the mountain.

The further taking of depositions in this cause is continued until Saturday morning, 8 o'clock.

J. H. PAYNE, *Com.*

Saturday morning, 8 o'clock, Sept. 29, 1855.

The further taking of depositions resumed, present the same parties as on yesterday, except Thomas H. Calloway, one of the respondents, and Alfred Caldwell, one of the respondents' solicitors; and also absent, Alexander H. Keith, one of the respondents.

J. H. PAYNE, *Com.*

7th Int. by same. Please to state whether your brother resided on the Savannah or Hiwassee Old Town farm during your partnership in the farming business, and whether he was in the habit of writing to you regularly or frequently about the affairs of the farm.

Answer. He did reside on the said farm during the partnership between us, and was in the habit of writing to me frequently and regularly about the affairs of the farm.

8th Int. by same. If you any recollection about his having written

to you as to where the cattle were sent to range in the year 1842, who herded them, and when, whether they had been driven out of the range that year, for what reason, what he (your brother, the complainant) intended to do or had done in consequence of his cattle being so driven out, please to state, with all the facts and circumstances by which you can aid your memory, the purport of what was so written to you.

Answer. As I said, in answer to a former question, I do not remember distinctly whether they were kept on the Chesnut Mountain in the year 1842 or 1843, but William Watkins kept them one of those years over in the region of Ducktown, Polk County, and from a letter received from Wm. P. Lea, I was informed that they were driven or run out of the mountain, within a few days after they were taken out there, by some person fastened a bear skin to one of them; at the same time said he would go to Cleveland, and enter some land over there, as Watkins had either told him or sent him word (I do not recollect where) the people over there would not suffer them to stay there, as we had no land there.

My recollection is that he afterwards wrote that he had entered land over there, and the cattle was not driven out any more after they were taken back. Afterwards I was at the farm, in the fall, about gathering corn, and I heard him and Col. J. C. Maples speaking of the circumstance. Those letters I have not got, having burnt or destroyed them, with others that accommodted on my hands, and in my way, not thinking them of any further importance, and which I have frequently done when in my way.

To which said 8th question by agent of complainant, the respondents except, because it seeks the introduction of ex parte statements, said to be in writing of the complainant, William Pinckney Lea, without first accounting for the absence of said letters.

9th Int. by same. Please to state whether the conversation alluded to in your last answer, held with complainant and Col. J. C. Maples, in relation to the cattle being run out of the Ducktown range, took place during the autumn of the same year that you speak of having hunted with Dr. Hawkins in the mountains, on the north side of the Hiwassee River.

Answer. It was in the autumn of the same year that Watkins kept the cattle, and was the first time I visited the farm, as well as I can recollect, after the cattle was run out.

10th Int. by same. Please to state distinctly the time of year you hunted with Dr. Hawkins, when going to salt your cattle on the north side of the river, and give circumstances, if any, by which you can fix in your own mind the date.

Answer. I think it was in July of the summer that our cattle (meaning Dr. Hawkins') was on the Chestnut Mountain, north of Hiwassee River.

11th Int. by same. Please to state whether you hunted with hounds when Dr. Hawkins hunted with you, or whether you were still hunt-

ing, and state whether you were in the habit of hunting with hounds during the autumn and summer seasons both.

Answer. We hunted with hounds, and we were in the habit of hunting together with hounds frequently, when I was at the farm, during the summer and autumn seasons.

12th Int. by same. Please to state whether your cattle and those of Col. J. Maples were herded together during the years 1842 and 1843.

Answer. They were herded together the year that Watkins kept them, but was not, as well as I recollect, the year that our cattle was on the Chestnut Mountains.

13th Int. by same. Please to state whether your cattle were herded on the south side of the Hiwassee River between the year when Wm. Watkins kept them and the year 1846, when you have said they were kept by William Pace.

Answer. They were not.

14th Int. by same. In answer to a previous question, you have stated that Wm. Watkins kept the cattle in "the region of Ducktown;" please to set forth fully what region or portion of country you understand to be embraced under the appellation of Ducktown.

Answer. It is a mountainous region of country, and now known as containing copper ores.

15th Int. by same. Please to state whether you considered your cattle in the region of Ducktown when they were herded by William Pace.

Answer. I did not.

16th Int. by same. Please to state whether complainant made any entries of land in the office of the Entry Taker at Cleveland in accordance with the agreement between him and yourself, referred to in your answer to my 6th interrogatory; and in whose name were such entries.

Answer. He made several entries, and made them in his own name, William P. Lea.

17th Int. by same. Please to state whether the lands referred to in the last question were transferred to you by Wm. P. Lea, and if aye, please to state when and for what consideration.

Answer. They were transferred to me, the consideration named in the deed as well as I can recollect was fifty dollars, the date I do not remember, having handed over all my title papers to John M. Ghee when I sold said farm to him.

18th Int. by same. When the lands referred to in the last interrogatory were transferred as deeded to you by complainant, did he say anything to you about other entries that he had made in the mountains, and for which he had not then obtained the grants? if aye, please to state what was said by him in relation thereto.

Answer. I do not remember that he said anything at that time, but I heard him say frequently that he had not got all his grants.

19th Int. by same. Please to state whether you have heard Wm.

P. Lea make complaint of not being able to get his grants from the Register's Office at any time subsequently to the date of the deed to you for other lands sold to you.

Answer. My recollection is that I heard him say both before and since he made the deed to me, that he could not get all his grants, and he at one time said that the register told him he could not account for it.

20th Int. by same. Please to state as nearly as you can the date of the last conversation alluded to in your last answer.

Answer. As well as I can recollect, it was while he was in my service, closed on the 16th December, 1845.

21st Int. by same. Please to state as nearly as you can, where complainant has resided from the year 1845, where he left your employment down to this time.

Answer. After he left my employment, as well as I can recollect, he went to Alabama on a boating trip, how long he was in that country I do not recollect, but was from one to two years. When he came back to this country I think he lived a while with P. J. G. Lea, who was then selling goods in this place; he then went to Etowa Iron Works in Georgia, with a lot of hogs for me, which was, I think, in the fall of 1848. While there he made an arrangement to purchase wheat for Col. Cooper, as he, Wm. P. Lea, told me after he returned to my house. He then set out on that business for Col. Cooper, which made it necessary for him to make his home at Chattanooga, at which place he continued until about a year or more, since he went to Dalton, Georgia, at which place he has made his place of residence up to this date.

22d Int. by same. In whose employment was complainant when he went to Alabama, and in what capacity did he go?

Answer. I do not know certainly whose employment he was in, but I think P. J. G. Lea, Tho's H. Calloway, and James W. Inman, had employed him to go down to Alabama with wheat or flour, perhaps both. I think in charge of a boat. I do not know whether he had authority to sell or not.

23d Int. by same. Please to state as nearly as you can what was the condition of complainant's health when he went to Alabama, during his absence and since his return.

Answer. When he was with me last before he started to Alabama, he was, as well as I recollect, in his usual health. While in Alabama he was taken sick at my brother's, H. H. Lea, informed me by letter, and was at his house some time in very bad health after he came therefrom, the house of an old gentleman by the name of Maples where he came very near dying, as H. H. Lea informed me; his health has never been good since his return.

24th Int. by same. Please to state if you can, whether all the lands in the Ocoee District were taken up by entry previously to the year 1843.

Answer. I do not know of my own knowledge, but I think from

all I could learn, that the lands in the Ocoee District was all pretty much entered.

25th by same. Please to state whether the books and papers to which you have referred in aiding you to fix dates in your answers to the foregoing questions, have been and are now open to the inpsection of all the parties present.

Answer. They are.

Cross-examination.

1 question of respondents' solicitor. You will please state how far it is from the Savannah farm on Hiwassee Old Town, of which you have spoken in your examination in chief, to the land in controversy in this suit.

Answer. I suppose it is about 35 or 36 miles the way the road runs by Benton; do not know certainly the exact distance.

2d by same. Were or not the entries made by William Pinckney Lea at one cent per acre, all made in the neighborhood of said Savannah farm, and were they or not made for your benefit and as an appendage to the farm?

Answer. The entries he made near the farm, or that he decided to me was for my benefit, and as an appendage to the farm.

3d by same. Do you or not know of the complainant Lea entering any lands at one cent per acre except such as he entered near said farm?

Answer. I do not know of my own knowledge that he did, only from what he wrote me and the conversation he, J. C. Maples, and myself had about his entering land for the use of the cattle when they were run out of the mountains and since that time.

4th by same. At the time the complainant Lea was in your service, as you have hereinbefore stated, on the Savannah farm, who was then the owner of said farm? had complainant any interest in the farm?

Answer. I was the entire owner of the farm.

5th by same. How far does the Savannah farm lie from the mountain, and what mountain?

Answer. *Answer.* It runs up to the foot of Chilhowie Mountain.

6th by same. At the time William Pinckney Lea deeded his mountain land to you, for the consideration of fifty dollars, did you know of his claiming any land in the mountain except what he deeded to you at the time, and did you actually pay him fifty dollars for his lands in the mountain, or do you mean only to say this was the sum named as a consideration in the deed?

Answer. I did not know of my own knowledge that he owned any; I inferred that he did from his saying he had not got all his grants; I did not pay him the fifty dollars; I only say so, as it is necessary to name a consideration in deeds of conveyance.

7th by same. In your answer to the 8th question in your examination in chief you state that William Watkins kept the cattle in the

region of Ducktown; have you ever been at the place that Watkins kept the cattle? if so, do you not know that it is a considerable distance from the land in dispute? state the distance, as near as you can, and also state whether or not there is a very high mountain between the place the cattle were kept and Ducktown, and were the cattle ever kept in Ducktown.

Answer. I was once at the place that I was told was the place where the cattle was kept by Watkins a few minutes only; I do not know the distance from there, but suppose it not far to the land in dispute from the idea I have of the country; I do not know anything about a high mountain between the place the cattle were kept and Ducktown, never having been through that way to Ducktown. Unless the cattle were near enough to graze in and about Ducktown at the time Watkins kept them in that region; they were never kept by any one else over there.

8th by same. Were you ever from where Watkins kept the cattle through to Ducktown, and if not, upon what do you base your opinion as to the distance between these points?

Answer. I never was through from where Watkins kept them in the cattle to Ducktown; I base my opinion as to the distance from the distance from the farm to where they were kept by Watkins, which I suppose to be about twenty-one miles the way it is travelled.

9th by same. Have you ever been to Ducktown? if yea, is there not west of Ducktown a high mountain to be seen, and is not said mountain between where Watkins kept the cattle and Ducktown?

Answer. I was once at Ducktown, and there seems to be a high mountain I suppose to be west of that place from a map before me; I think it is between Ducktown and where Watkins kept the cattle.

10th by same. In answer to the 14th question by complainant you say the region of Ducktown is a mountainous country and containing copper ore; do you not know also that the portion of country known as Ducktown, and especially that part of it near the land in dispute, is a level country, and was tolerably thickly settled as early as 1842.

Answer. The portion of country known as Ducktown I think is considerably rolling; I do not think it a level country; I do not know anything about the settlement of that country in 1842.

11th by same. In answer to the 22d question you say that William P. Lea was employed by P. J. G. Lea and Thos. H. Calloway, how do you know that Calloway employed him, and may you not be mistaken as to his being employed by said Calloway?

Answer. I do not know personally that Thos. H. Calloway personally employed William P. Lea; he told me he was employed by him (Thos. H. Calloway), P. J. G. Lea and James W. Inman.

12th by same. Do you know what portion of country constitutes Ducktown? if aye, give its boundaries.

Answer. I cannot bound it.

Re-examined by Complainant's Agent.

1st Int'y. Please to state whether the route usually travelled across the mountains from the Savannah Farm to Ducktown, passes by the places where William Pace and William Watkins each kept the cattle, and state how far between the Savannah Farm and the former, the distance between the two places, and whether there is a high mountain between the two cabins or places named.

Answer. The route from the Savannah Farm to Ducktown, that I speak of, the distance being near the house *the house* where William Pace lived when he kept the cattle, but does not river by the place that William Watkins kept them. I think the distance from the farm to Pace's cabin was about 16 miles, and then about 5 miles to the Watkins cabin, where he kept the cattle; there is a small mountain, as well as I recollect, between cabins, and a crooked route; the mountain between those cabins is not the one seen from Ducktown. And further this deponent saith not.

CASWELL LEA.

Larkin Lewis, aged about 30 years, being next introduced and sworn, deposes and says:—

1st Interrogatory by complainant's agent. Where did you reside, and how employed during the years from 1842 to 1846 inclusive?

Answer. I made the old man William Maples, my home during that time.

2d Int. by same. Where and by whom were the cattle belonging to the Maples family herded in the range during the years 1842 to 1846?

Answer. I think they were kept by a man by the name of Wadkins in the year of 1842 or '43, and the remainder of the time up to 1846, I don't know.

3d Int. by same. How many cattle did Watkins keep for Maples in 1843?

Answer. As well as I can recollect, I think he kept between 30 and 40.

And further this deponent saith not.

his
LARKIN + LEWIS.
mark

Oliver Lewis, aged about 23 years, being next introduced and sworn, deposes and says:—

1st Int. by complainant's agent. Where and with whom did you live in the year 1846?

Answer. I lived with old man William Maples, and worked part of the season on the Savannah Farm with his son, J. C. Maples.

2d Int. by same. Where, and by whom were the cattle belonging to the Maples family and to Caswell Lea, herded during the summer of 1846?

Answer. They were driven over on the south side of the Hiwassee

in the spring of that year, but by whom they were herded, I can't say.

3d Int. by same. State any fact or circumstance by which you are enabled to determine the date last named.

Answer. The reason I know it was that year, is the fact that J. C. Maples had volunteered for the Mexican war that year, and I was down on the Savannah working in his place while he was raising a company.

4th Int. by same. Where were the cattle kept in the two summers preceding that of 1846?

Answer. They were kept at Larkin Rutherford's in the years of 1844 and 1845.

5th Int. by same. Were the cattle of Caswell Lea herded with those of the Maples family during the years 1844, 1845 and 1846?

Answer. That was my understanding.

And further this deponent saith not. OLIVER LEWIS.

Abner Logan, a witness for complainant, aged about forty-seven years, and after being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:—

1st Interrogatory by complainant. Please to state whether you resided on the Savannah Farm, Polk County, Tennessee, from the year 1840 to 1845 inclusive.

Ans. I did.

2d Inter'y by same. Was it the custom to take the cattle belonging to Caswell and Wm. P. Lea, kept on the Savannah Farm, to the mountain range in the grazing season, during the time last named?

Ans. It was.

3d Int. by same. Please to state, if you can, in what range the cattle belonging to the Savannah Farm were herded during each year from 1840 to 1845 inclusive, and who was employed to herd them in each year.

Ans. During the years 1840 and 1841, I think they attended to their cattle themselves, on Bean's Mountain. In 1842 I understood they took them out about the Frog Mountain, and that Wm. Wadkins herded them. My information was from complainant Lea and Wadkins (or Watkins) themselves, and during the year 1843 they were kept on the Chestnut Mountain; complainant Lea and Col. J. C. Maples passed my house while they were attending to them. And in 1844 and 1845, my best recollection is that Larkin Rutherford kept them on the north side of the Hiwassee River.

4th Int. by same. In your last answer, you referred to Col. J. C. Maples as passing your house whilst attending to cattle in the range. Please to state whether he that year had his cattle herded with those of complainant.

Ans. I can't say for certain, though I think he had, as they were in the habit of herding together.

5th Int. by same. Please to state whether you heard anything

said by complainant about his cattle being run out of the range when herded by Wm. Watkins near the Frog Mountain; if aye, state what he said about it, why they were run out of the range, what he intended to do in consequence thereof, and what he had done in relation thereto.

Ans. I understood by complainant Lea, they were run out by tying a bearskin on one of the yearlings; he said they were run out because he, complainant Lea, had no lands there; this was along in March pretty well, and he, complainant Lea, said he would let them stay out until he went and entered land which was but a short time until the mountain land in the Ocoee District would come down to one cent per acre. Said complainant Lea went, as he stated, to enter land, and when he came back said he had entered land, and then he, complainant, drove his cattle out to the range again, but did not drive them past my house, but drove them along on the south side of the river, in about 150 yards of my house, and after that I heard nothing more about their being interrupted.

Cross-examination by Solicitor of Respondent.

1st Question. In your answer to the 5th int'y of complainant's agent, you detail a conversation which took place with complainant; you will please state at what place this conversation took place, and who were present at the time.

Ans. I don't recollect of any person being present when that conversation took place. My recollection is that it took place at my house.

2d by same. You will please state, if your recollection is distinct, as to whether complainant said in the conversation referred to, he would enter land, or may he not have said he would make arrangements by which his cattle would not again be run off the mountains.

Ans. He told me he would enter land so his cattle should not be run out of the range again; my recollection is distinct on that point.

3d by same. Were you ever at the point, or in the range where Watkins kept the cattle during the time he herded them?

Ans. I never was.

4th by same. How long after the cattle were driven out, as you understand, until they were driven by your house, on the south side of the river, to the range the second time, as near as you can state?

Ans. I have no recollection as to the time.

5th by same. You will please state, if you know, when the land in the Ocoee District fell to one cent per acre.

Ans. In April, 1842.

6th by same. Do you know of your own knowledge, of complainant ever entering land in the Ocoee District?

Ans. I do not.

7th by same. State if you ever heard complainant say why he never took the cattle back to the Frog Mountain after the year 1842.

Ans. I never heard him say anything about it.

Re-examination.

1st Int. by complainant. In your answer to the second question of your cross-examination, you say the complainant told you he would enter lands, &c.; please to state whether he said he would enter lands in Ducktown.

Ans. I don't recollect about that at all.

And further this deponent saith not. his
ABNER + LOGAN.
mark

Samuel Madden, aged 55 years, being next called and duly sworn, deposes and says:—

1st Int. by complainant's agent. Has your deposition been heretofore taken in this case.

Answer. It has.

2d Int. by same. Please to state whether, in passing along the trail from Greasy Creek to Ducktown, as stated in your previous deposition, you saw any camp near where Wm. Watkins herded cattle, in the mountains towards Ducktown.

Answer. As I went through the first time, I saw a camp, an old fixin', looked like it might have been built by the Indians. Another time, in passing by, I saw a fire there, and stopped and warmed myself by it. It was on the same side the cabin was on; it was closer to the trail than the cabin, and some fifty or five yards from the cabin.

3d Int. by same. Please to state whether the *cabin* built by Watkins was or was not fully visible from the trail in passing along it.

Ans. It was.

4th Int. by same. In what year did you first see the camp of which you speak in your answer to my second question?

Ans. I cannot tell which it was, in the year 1841 or 1842; it was before the year 1843, but which year it was, I cannot be positive.

5th Int. by same. If you at any time met Wm. Watkins at that camp, please to state when, and who were present.

Ans. I never did see him there at any time, nor no person else using it.

6th Int. by same. Please to state whether, at any time, you saw signs of the camp having been recently used.

Ans. I saw signs of the camp having been used, but by whom I do not know.

7th Int. by same. Please to state how long after you first saw the *camp* referred to the *cabin* near it was built by Watkins.

Ans. I cannot tell.

And further this deponent saith not. SAMUEL MADEN.

Hezekiah C. Cooke, aged about 49 years, being next introduced and sworn, deposes and says:—

1st Interrogatory by complainant's agent. Please to state where the cattle belonging to the Savannah farm and to the Maples family were kept in the range during the years 1844 and 1845, giving circumstances by which you recall dates.

Answer. They were kept north of Hiwassee River, by Larkin and Rutherford. My acquaintance with that fact was from my recreation on the mountains, hunting for game, and boarding with Mr. Rutherford during the time, and meeting Mr. Lea and Maples there, looking after their cattle, and from the dates of the entering of Larkin Rutherford's land; it could not have been earlier.

And further this deponent saith not. H. C. COOKE.

William H. Maples, aged about 33 years, being first introduced and sworn, deposes and says:—

1st Interrogatory by A. M. Lea, agent for complainant. Please to state how you are related to Col. J. C. Maples, and to Wm. Maples.

Answer. Col. J. C. Maples is my brother, and Wm. Maples is my father.

2d Int. by same. How far, and in what direction, does your father live from the Savannah farm, formerly owned by Caswell Lea.

Ans. About six miles; a northwest direction.

3d Int. by same. Please to state whether it has been usual for the cattle belonging to your family to be herded in the range during the grazing seasons; and if yea, state where and by whom they were herded during the years 1840 to 1847, inclusive, giving facts and circumstances, and citing record, if any, by which you are enabled to recall dates.

Ans. It was usual for the cattle to be kept in range during the grazing season; the cattle were kept in or on Bean's Mountain, by Wm. P. Lea and J. C. Maples, in the year 1841, know by the fact that I went to the mountain in August with W. P. Lea, in '41, to salt and look after the cattle; in '42, to Watkins, know by the fact that I went in person, in the spring, with the cattle, to Wm. Watkins; in '43 at Wadkins, known by Watkins having come down to my father's house early in the spring, to give notice that he could take charge of the cattle in a few days; in '44 by Larkin Rutherford, know by reference to some account books in my possession, in my brother's handwriting, also by having gone in person with Wm. P. Lea, in the summer of '44, to Larkin Rutherford's house; at Larkin Rutherford's in '45, known by the fact that Rutherford kept our cattle two years; in '46 and '47, they were sent to Pace and Runian, or Pace or Runian, known by having heard my brother, R. M. Newman, and others, say they were going to Pace and Runian's to see after the cattle.

4th Int. by same. Please to state any other circumstance by which

you fix the date of 1841, when the cattle were on Bean's Mountain.

Answer. I was a student at Forest Hill Academy in '41. When I left school and home, my brother was confined to his room by sickness, and he sent me to look after cattle in his place.

5th Int. by same. How many cattle did your brother, J. C. Maples, place under the care of William Watkins in the year 1842 and 1843, respectively?

Ans. In '42, 52 head of cattle; in '43, number not recollected.

6th Int. by same. Were the number of cattle on your father's farm in 1842, greater or less than in due proportion to the forage on hand?

Ans. The number of cattle kept during several winters about '42 and '43, were as great as we could furnish feed for.

7th Int. by same. State, if you can, whether there was any special reason for getting the stock away from the farm as early in the spring as possible, in the year 1842.

Ans. I think we were unusually short of rough food, as we wintered more cattle that winter than we had done for many years before.

8th Int. by same. At what time, in the spring were the cattle taken to the range in the year 1842?

Ans. Do not remember.

9th Int. by same. Please to state any circumstances tending to show whether the cattle were taken to the range, in 1842, before or after the usual time of planting corn.

Ans. As we went to the range in '42, passing up the Hiwassee River, we found fences down, and in passing up the river, passed through some fields that were not ploughed or prepared in any way for planting.

10th Int. by same. Please to state what remark, if any, was made by your brother, J. C. Maples, in passing through the field near the mouth of Spring Creek, and give the circumstances causing the remark, when you were taking your cattle to the range in 1842.

Ans. Brother stated, in passing near the mouth of Spring Creek, that it look like the first of February as to farming arrangements, the farms looked so little like arrangements were making for planting.

11th Int. by same. Were you not abused by some of the people by the name of Crawford, living at mouth of Spring Creek, for passing through their field, thus attracting particular attention to its condition?

Ans. Yes, sir.

12th Int. by same. Did any accident happen to you in fording the river, calculated to fix the time in your mind? and if yea, state it.

Ans. I rode an ox across the river, and he fell down with me, a circumstance which makes me recollect it well.

13th Int. by same. Where did you leave the cattle when you took them out in 1842?

Ans. Near Watkins' house.

14th Int. by same. Do you know whether the spring of 1842 was unusually late or early? The same in regard to 1843.

Ans. Do not remember as to either '42 or '43.

15th Int. by same. State, if you can, why Watkins did not take the cattle back with him to the range when, as you have said, he came down to see about them in 1843.

Ans. On account of a cold spell, which blew up about the time he first came after the cattle.

16th Int. by same. State whether the range south of the Hiwassee River, in the Ocoee District was, or was not, better for some years after the removal of the Indians, than it had been for several years past.

Ans. It was better.

17th Int. by same. State whether the grass is usually deemed sufficient to support cattle in the range at an earlier day in the spring, when the range has not been much eaten out in previous years, than when it has been much grazed.

Ans. The grass where the range has not been much grazed, it is thought will do several days *sooner*, in spring than when much grazed.

18th Int. by same. When does corn planting usually begin along the Hiwassee River?

Ans. From the 21st of March to the 10th day of April, according to the season.

19th Int. by same. At what time do you of late years take your cattle to the range?

Ans. From the last day of March to the 15th of April.

20th Int. by same. At what time did you take your cattle to the range in 1854, and where did you take them?

Ans. The last day of March, and took them south of the Ocoee River to the base of Frog Mountain.

21st Int. by same. If you sold any cattle last spring, state how many, why, and to whom you sold them, when, and where he took them, and how they afterwards subsisted.

Ans. I sold about 56 head. Sold on account of want of feed. Sold to Caswell Walker the 17th day of February; do not know how they subsisted or fared; he told me he was going to Smoky Mountain, in North Carolina, to feed them on the winter grass.

22d Int. by same. If you are acquainted with the general character of the complainant, William P. Lea, please to state what it is.

Ans. I have been acquainted with W. P. Lea for about 15 years, was intimate with him from '41 to '45. Since that time have seen him only occasionally. He has been esteemed a correct sort of man as far as I know.

Cross-examination by Resp'ts' Sol.

Question 1. What number of cattle did Wm. Pinckney Lea have herded in the mountains with J. C. Maples, in 1842?

Ans. I do not know.

2d by same. Did he have as many, or near as many, as Col. Maples had?

Ans. I do not know.

3d by same. Why was it that compl't, Lea, did not have his cattle kept at Watkins with your brother's, in 1843.

Ans. I am not prepared to say.

4th by same. Is not compl't, Lea, a close saving man, and one that takes good care of what property he has, collects his debts closely, and looks carefully after his own interest?

Ans. I think he is, and looks well after his own interest.

And further this deponent saith not. WM. H. MAPLES.

John Runion, aged about fifty-seven years, deposeth as follows:—

1st Interrogatory by complainant's agent. Please to state where you lived the year the price of lands in the Ocoee District fell to one cent per acre, and each succeeding year up to 1846.

Ans. I lived on the school land near this place when the land fell to one cent per acre. I lived at the same place the next year. I moved and lived the next year on the land of Elisha Dadson, on Greasy Creek, and the next year I moved to where I now live, and have lived there ever since. I live in the mountains just on this side of the Little Frog Mountain, not more than a half a mile from the old Ducktown trail.

2d Int. by the same. If you and William Pace ever kept cattle for Caswell Lea in the mountains, please to state in what year or years.

Ans. We kept cattle for Caswell Lea the second year after I moved to the foot of Frog Mountain.

3d Int. by same. Have you any record of the ages of your children, written by Andrew J. Hooper, which will enable you to tell the date of the year when you and Pace kept cattle for Caswell Lea?

Ans. I have such a record written by A. J. Hooper, which I now exhibit.

4th Int. by same. Please to explain from that record the year when you and Pace kept the cattle.

Ans. Pace and I kept the cattle the year before my daughter, Permelia Catharine, was born. I know that fact from Pace and I having a difficulty about the cattle about the time my said daughter was born, and the record shows that she was born in June, 1847, and Pace kept the cattle alone one year after we kept them.

5th Int. by same. If you know where the camp stood in which William Watkins lived when he kept cattle for Wm. P. Lea and Calvin Maples, please to state where it is, as nearly as you can.

Ans. It lay some four miles from where I live now, on the south side of the mountain.

6th Int. by same. By what name is the mountain referred to in your last answer generally known?

Ans. The Little Frog Mountain.

7th Int. by same. Where to the Big Frog Mountain?

Ans. It is on the south side of Ocoee River, right against the end of the Little Frog Mountain.

8th Int. by same. What is that mountain called which lies next west of Brush Creek, on the north side of the Ocoee River?

Ans. I am not much acquainted with them waters. I think there is a mountain between it and the Frog Mountain called the Panther Mountain.

9th Int. by same. Which is the larger of the two, the Little Frog Mountain, or the Panther Mountain?

Ans. The Little Frog Mountain.

10th Int. by same. Do you know in what year William Watkins kept cattle for Lea and Maples on the south side of Little Frog Mountain?

Ans. I think it was the year before I moved to Greasy Creek, the year before I was married.

11th Int. by same. Did Watkins keep cattle at his camp south of Little Frog Mountain more than one year?

Ans. I don't know that he did.

12th Int. by same. Are you sure that Watkins kept cattle for Lea the year before you were married?

Ans. Yes, sir; I think so, according to the balance of my records.

13th Int. by same. How did you learn whose cattle Watkins was keeping at his cabin?

Ans. I learned it from Pace and others, on Greasy Creek. I think they were Gilbreath's and Maples' cattle he was keeping when I was there.

14th Int. by same. When was you at Watkins' camp when he had cattle there?

Ans. I think it was the year before I moved to Greasy Creek.

15th Int. by same. May not Watkins have kept cattle at his camp, over the mountain, the year before you visited him there, without your being aware of the fact?

Ans. Likely he may. I don't recollect of his keeping but one year. I am certain he did not keep any after I went to Greasy Creek.

Cross-examination by Resp'd'ts' Solicitor.

Int. 1. Upon what creek or water course was the Watkins camp situated, and how far from the old Indian trail going from the Savannah farm to Ducktown?

Ans. I don't know the name of it—it is just a spring branch. It was not more than fifty yards from the trail, on the left hand of it.

2d Int. In going from the Savannah farm to Ducktown by the old Indian trail, do you cross the little Frog Mountain before you get to the place where the Watkins camp stood?

Ans. I do.

3d by same. How many mountains are there between the Watkins camp and Ducktown?

Ans. There is two right smart ones to go the old trail.

4th Int. By what names are they called?

Ans. They call one the Watkins Ridge, and the other the Panther Mountain.

5th Int. In what year were you married?

Ans. According to the record it was in 1844.

And further deponent saith not.

his
JOHN + RUNION.
mark.

Charles H. Rutherford, aged about 27 years, being next introduced and sworn, deposes and says:—

1st Int. by complainant's agent. Please to state where and by whom the cattle belonging to Caswell Lea and to the Maples family were herded during the years 1844, 1845 and 1846.

Answer. In the years 1844 and '45 they were kept in Polk County, on Lost Creek, by my father, Larkin Rutherford, on the north side of the Hiwassee River. In 1846 they were kept on the south side of the Hiwassee River. The reason I know this I was living on the Savannah with Mr. J. C. Maples, and Lea stopped there as he was going up, and Maples took his cattle on with him. The cattle were kept by William Pace and John Runyions in 1846. Larkin Rutherford lived on Tower Creek, but cattle were kept over on Lost Creek.

And further this deponent saith not.

C. H. RUTHERFORD.

James M. Rutherford, aged about 34 years, being next introduced and sworn, deposes and says:—

1st Interrogatory by complainant's agent. Please to state where and by whom the cattle of the Maples family, and also those of Caswell and Wm. P. Lea, were herded in the range during the years 1843, 1844 and 1845.

Ans'r. Where the cattle were kept in 1843 I don't know, of my own knowledge, for I never saw them. In 1844 they were kept on Tower Creek, in Polk County, at my father's, Larkin Rutherford, and also in 1845 at the same place.

2d Int. by same. If you have ever heard the complainant, Wm. P. Lea, at any time previous to the commencement of this suit, claim the land in dispute, please to state when, where, and circumstances in detail.

Resp'd'ts, by their solicitor, except to the above question, because

it seeks to introduce the declarations of complainant as evidence for himself. J. B. COOKE, *Sol.*

Exception overruled, and the witness allowed to answer.

WILLIAM LOWRY, *Com'r.*

Answer. I heard William Lea say that he had attempted to keep cattle in the Ducktown country, and the people there caught a yearling of some of the company that had cattle there, and put a bear skin on it, and run the cattle out of that range; and that he then went and entered some land in that country for the preference of keeping cattle there. He then said that he would rather keep cattle in that country if he had such a man as Larkin Rutherford to herd and take care of them. This conversation occurred at Larkin Rutherford's, in the year 1844. I think the conversation came up in talking about Thomas Mastin having entered some land up there. It was stated by some that Mastin had entered some land in that country, and the people were mad about it, and making threats, and Mastin said he asked them no 0000, that he would horsewhip them if they disturbed him. Lea said that he did not want to hold his that way—that he wanted to hold it peaceably.

3d Int. by same. Did Wm. P. Lea give any reason for having removed his cattle from the range on the south side of the Hiwassee River to your father's, on the north side, except that of having your father as herdsman?

Answer. Yes, sir, that they run his cattle out of there.

4 Int. by same. Did complainant say anything of the manner in which Watkins had taken care of his cattle; and, if yea, what was said?

Answer. He said every time he went out he found Watkins at the still-house drunk, or some other place drunk.

5 Int. by same. Was not complainant noted among his acquaintances for his hostility to the use of intoxicating drinks and to frolicking generally, and, in consequence thereof, unpopular among the mountain people where he had formerly kept his cattle?

Answer. Yes, sir, I suppose he was.

6 Int. by same. Was not Col. J. C. Maples of a social and jovial turn, and very popular with the mountain people?

Answer. Yes, sir, he was.

7th Int. by same. By what fact or circumstance do you fix the date of 1844 last named?

Ans. I was married in 1843, and was out there where the cattle were kept in 1844 frequently; and I remember it from the fact that I moved out there where the cattle were kept, or in the neighborhood, the second day after Polk's election in 1844.

8th Int. by same. Please to state whether you now hold any official station in this county.

Answer. I am a deputy sheriff in this county at this time.

Respondents, by their solicitor, except to the 1st, 2d, 3d and 4th

interrogatories propounded to the witness, James M. Rutherford, and the answers thereto, because they seek to make the statements and declarations of complainant evidence for himself; and to the 5 and 6 interrogatories, because they are directly leading, and indicate the answer sought, to the witness. J. B. COOKE, *Sol.*

And further this deponent saith not.

J. M. RUTHERFORD.

December 8th. Examination of Witnesses resumed.

William P. Rutherford, aged about 30 years, being next introduced and sworn, deposes and says—

1st Interrogatory by complainant's agent. State, if you know, when and by whom the cattle belonging to the Savannah Farm, and to the Maples family, were herded in the range in the years 1844 and 1845, giving circumstances by which you recall dates.

Answer. My recollection is they were herded by my father who then lived in Polk County, on Tower Creek, those two years. At that time I remember I was not married, and, by reference to the date of my marriage, which I have examined, I find that I was married in the spring of 1846, and I remember that they were herded by my father during those two years from that circumstance; and in 1845 I think I helped William Pinckney Lea, in connection with Allen B. Stephens, to gather up the cattle in the mountain and drive them home. The year before my brother and myself caught a fawn while in the mountain, which I remember very distinctly.

2d Int. by same. If you have ever heard the complainant, Wm. P. Lea, claim the land in dispute, please to state the time, place, and circumstances.

Respondents by their solicitor except to the above question for the reason that it seeks to introduce the declarations of comp't as evidence for himself, unconnected with any possession or acts of ownership exercised by comp't in relation to said land.

J. B. COOKE, *Sol.*

Exception overruled and witness allowed to answer.

WILLIAM LOWRY, *Commissioner.*

Answer. I don't know for certain that I ever did hear him claim the land. I heard it rumored, but whether it was from Mr. Lea or my father, or other persons, I can't say, certainly, who I heard it from. I heard it while Lea had cattle in the mountain, but whether Mr. Lea was present when it was talked about I don't remember.

Cross-examination by Resp'd'ts' Sol.

Question 1st. Do you know where the land in dispute lies, or do you simply mean by your answer to comp't's last question that you heard a rumor that compl't had entered some lands in the Ocoee District, on the south side of the river, and would, therefore, have a right to have his cattle kept over there?

Answer. I do not know where the land in dispute lies only by rumor. I never was on the land that I know of. It was on the south side of the river that I had always understood that his land lay.

Re-examination.

1st Int. by compl't. State as nearly as you can where the land lay which, in your last answer, you say was on the south side of the river.

Answer. I don't know that I was ever through the country there but once; but understood the land was in the country where Watkins and Pace kept the cattle then.

2d Int. by same. Do you know whether Pace kept the cattle before they were kept by your father?

Answer. I don't know who kept them, but I heard it said that they kept the cattle over there.

Resp'ts by their solicitor except to the above questions and answers because they seek to introduce mere hearsay evidence.

J. B. COOKE, *Sol.*

And further this deponent saith not.

WM. P. RUTHERFORD.

Allen B. Stephens, aged about thirty-two years, being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:—

1st Interrogatory by complainant's agent. Please to state whether you are acquainted with the parties in this suit.

Ans. I am acquainted with Wm. P. Lea, and know the other parties when I see them.

2d Int. by same. Please to state where you lived and in what you were employed each year from 1843 to 1847 inclusive.

Ans. I lived in 1843 at the foot of Bean's or Chilhowie Mountain, between four and five miles from the Big Savannah; in the fall of 1843 I moved to the Savannah farm; I remained there till the fall of 1845; I then moved to McMinn County, Tenn. On Canapanger to the widow Fore's farm; I remained there till the fall of 1847 and then moved back to the Big Savannah in October, 1847. My home was with my father during this time, but in the spring and summer of 1846 and 1847, I was on the Savannah farm. I was generally employed on the farm and at farming business during this period.

3d Int. by same. Please to state whether you were hired by complainant, or his brother Caswell Lea, to work for them during the spring and summer season of the year 1843, 1844, 1845, 1846, and 1847; and whether you boarded and lodged in their own dwelling when employed by them.

Ans. In 1843 and 1844 I was hired by Wm. P. Lea, and worked on the Savannah farm and boarded with him in 1843, and in 1844, in 1845, 1846, 1847 I was hired to Caswell Lea and lodged and boarded in his own house.

4th Int. by same. When hired to work on the Savannah farm, please to state whether you had usually any charge of the stock belonging to the farm.

Ans. I had charge of the horses when working them, and two years; I frequently went out to the mountains to see about the cattle.

5th Int. by same. Please to state, as nearly as you can, where the cattle belonging to the Savannah farm were herded in the range during the grazing season of 1843, 1844, 1845, 1846, and 1847, giving the names of the persons who herded them in the range each year.

Ans. In 1843, I do not know of my own knowledge where they were herded. I heard Mr. Lea and Dr. Hawkins say, they were herded on the Chestnut or Gee Mountain; in 1844 and 1845, Larkin Rutherford kept them on what is called Towies Creek, north of Hiwassee River; in 1846 & 1847 they were kept by Wm. Pace out under the Frog Mountain. The Chestnut or Gee Mountain is north of Hiwassee River.

Resp'ts by their sol. excepts to so much of the above answer as details what Mr. Lea and Dr. Hawkins state, because it is mere hearsay evidence. J. B. COOKE.

5th Int. by same. Please to state whether you saw complainant or his brother, Caswell Lea, at any time during the year 1843, set out from their home on the Savannah farm, for the purpose of going out to salt their cattle in the range; and if aye, state in what direction he or they went.

Ans. I saw Wm. P. Lea start out to salt his cattle in 1843. He started out toward the Chestnut or Gee Mountain.

7th Int. by same. Please to state whether you saw the cattle belonging to the Savannah farm brought in from the range in the autumn of 1843; and if aye, state from what direction they came.

Ans. I saw the cattle brought through the farm from towards the upper end of the farm; do not know from what direction they came into the farm.

8th Int. by same. Please to state whether the cattle would naturally have been brought home through the farm as described in your last answer, had they been brought from the Chestnut or Gee's Mountain.

Ans. They would; the upper end of the farm lies at the foot of the Gee Mountain; they are commonly drove back and forth through the farm when they are herded about the mountain.

9th Int. by same. If you saw persons set out from the Savannah farm in the autumn of 1843, for the purpose of bringing the cattle home from the range, please to state how long they were absent from the farm for that purpose.

Ans. I do not know that I did.

10th Int. by same. You have stated that you saw complainant set

Answer. I do not know where the land in dispute lies only by rumor. I never was on the land that I know of. It was on the south side of the river that I had always understood that his land lay.

Re-examination.

1st Int. by compl't. State as nearly as you can where the land lay which, in your last answer, you say was on the south side of the river.

Answer. I don't know that I was ever through the country there but once; but understood the land was in the country where Watkins and Pace kept the cattle then.

2d Int. by same. Do you know whether Pace kept the cattle before they were kept by your father?

Answer. I don't know who kept them, but I heard it said that they kept the cattle over there.

Resp'ts by their solicitor except to the above questions and answers because they seek to introduce mere hearsay evidence.

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Ans. I am acquainted with Wm. P. Lea, and know the other parties when I see them.

2d Int. by same. Please to state where you lived and in what you were employed each year from 1843 to 1847 inclusive.

Ans. I lived in 1843 at the foot of Bean's or Chilhowie Mountain, between four and five miles from the Big Savannah; in the fall of 1843 I moved to the Savannah farm; I remained there till the fall of 1845; I then moved to McMinn County, Tenn. On Canapanger to the widow Fore's farm; I remained there till the fall of 1847 and then moved back to the Big Savannah in October, 1847. My home was with my father during this time, but in the spring and summer of 1846 and 1847, I was on the Savannah farm. I was generally employed on the farm and at farming business during this period.

3d Int. by same. Please to state whether you were hired by complainant, or his brother Caswell Lea, to work for them during the spring and summer season of the year 1843, 1844, 1845, 1846, and 1847; and whether you boarded and lodged in their own dwelling when employed by them.

Ans. In 1843 and 1844 I was hired by Wm. P. Lea, and worked on the Savannah farm and boarded with him in 1843, and in 1844, in 1845, 1846, 1847 I was hired to Caswell Lea and lodged and boarded in his own house.

4th Int. by same. When hired to work on the Savannah farm, please to state whether you had usually any charge of the stock belonging to the farm.

Ans. I had charge of the horses when working them, and two years; I frequently went out to the mountains to see about the cattle.

5th Int. by same. Please to state, as nearly as you can, where the cattle belonging to the Savannah farm were herded in the range during the grazing season of 1843, 1844, 1845, 1846, and 1847, giving the names of the persons who herded them in the range each year.

Ans. In 1843, I do not know of my own knowledge where they were herded. I heard Mr. Lea and Dr. Hawkins say, they were herded on the Chestnut or Gee Mountain; in 1844 and 1845, Larkin Rutherford kept them on what is called Towies Creek, north of Hiwassee River; in 1846 & 1847 they were kept by Wm. Pace out under the Frog Mountain. The Chestnut or Gee Mountain is north of Hiwassee River.

Resp'ts by their sol. excepts to so much of the above answer as details what Mr. Lea and Dr. Hawkins state, because it is mere hearsay evidence. J. B. COOKE.

5th Int. by same. Please to state whether you saw complainant or his brother, Caswell Lea, at any time during the year 1843, set out from their home on the Savannah farm, for the purpose of going out to salt their cattle in the range; and if aye, state in what direction he or they went.

Ans. I saw Wm. P. Lea start out to salt his cattle in 1843. He started out toward the Chestnut or Gee Mountain.

7th Int. by same. Please to state whether you saw the cattle belonging to the Savannah farm brought in from the range in the autumn of 1843; and if aye, state from what direction they came.

Ans. I saw the cattle brought through the farm from towards the upper end of the farm; do not know from what direction they came into the farm.

8th Int. by same. Please to state whether the cattle would naturally have been brought home through the farm as described in your last answer, had they been brought from the Chestnut or Gee's Mountain.

Ans. They would; the upper end of the farm lies at the foot of the Gee Mountain; they are commonly drove back and forth through the farm when they are herded about the mountain.

9th Int. by same. If you saw persons set out from the Savannah farm in the autumn of 1843, for the purpose of bringing the cattle home from the range, please to state how long they were absent from the farm for that purpose.

Ans. I do not know that I did.

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Answer. I do not know where the land in dispute lies only by rumor. I never was on the land that I know of. It was on the south side of the river that I had always understood that his land lay.

Re-examination.

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2d Int. by same. Please to state where you lived and in what you were employed each year from 1843 to 1847 inclusive.

Ans. I lived in 1843 at the foot of Bean's or Chilhowie Mountain, between four and five miles from the Big Savannah; in the fall of 1843 I moved to the Savannah farm; I remained there till the fall of 1845; I then moved to McMinn County, Tenn. On Canapanger to the widow Fore's farm; I remained there till the fall of 1847 and then moved back to the Big Savannah in October, 1847. My home was with my father during this time, but in the spring and summer of 1846 and 1847, I was on the Savannah farm. I was generally employed on the farm and at farming business during this period.

3d Int. by same. Please to state whether you were hired by complainant, or his brother Caswell Lea, to work for them during the spring and summer season of the year 1843, 1844, 1845, 1846, and 1847; and whether you boarded and lodged in their own dwelling when employed by them.

Ans. In 1843 and 1844 I was hired by Wm. P. Lea, and worked on the Savannah farm and boarded with him in 1843, and in 1844, in 1845, 1846, 1847 I was hired to Caswell Lea and lodged and boarded in his own house.

4th Int. by same. When hired to work on the Savannah farm, please to state whether you had usually any charge of the stock belonging to the farm.

Ans. I had charge of the horses when working them, and two years; I frequently went out to the mountains to see about the cattle.

5th Int. by same. Please to state, as nearly as you can, where the cattle belonging to the Savannah farm were herded in the range during the grazing season of 1843, 1844, 1845, 1846, and 1847, giving the names of the persons who herded them in the range each year.

Ans. In 1843, I do not know of my own knowledge where they were herded. I heard Mr. Lea and Dr. Hawkins say, they were herded on the Chestnut or Gee Mountain; in 1844 and 1845, Larkin Rutherford kept them on what is called Towies Creek, north of Hiwassee River; in 1846 & 1847 they were kept by Wm. Pace out under the Frog Mountain. The Chestnut or Gee Mountain is north of Hiwassee River.

Resp'ts by their sol. excepts to so much of the above answer as details what Mr. Lea and Dr. Hawkins state, because it is mere hearsay evidence. J. B. COOKE.

5th Int. by same. Please to state whether you saw complainant or his brother, Caswell Lea, at any time during the year 1843, set out from their home on the Savannah farm, for the purpose of going out to salt their cattle in the range; and if aye, state in what direction he or they went.

Ans. I saw Wm. P. Lea start out to salt his cattle in 1843. He started out toward the Chestnut or Gee Mountain.

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Ans. I saw the cattle brought through the farm from towards the upper end of the farm; do not know from what direction they came into the farm.

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Ans. They would; the upper end of the farm lies at the foot of the Gee Mountain; they are commonly drove back and forth through the farm when they are herded about the mountain.

9th Int. by same. If you saw persons set out from the Savannah farm in the autumn of 1843, for the purpose of bringing the cattle home from the range, please to state how long they were absent from the farm for that purpose.

Ans. I do not know that I did.

10th Int. by same. You have stated that you saw complainant set

out from his home on the Savannah farm, in the year 1843, for the purpose of salting his cattle then in the range; please to state how long he was absent from home for that purpose.

Ans. Sometimes he would be gone a day and night, and sometimes he would be back the same day.

11th Int. by same. Please to state how you know that the cattle were herded by Larkin Rutherford on Towey's Creek in the years 1844 and 1845.

Ans. I was there in each year, and brought beef cattle and cows from there.

12th Int. by same. Please to state how you know that the cattle were herded by William Pace during the years 1846 and 1847.

Ans. From the fact of my being there on the farm, and seeing him, Wm. Pace, and them, take the cattle away and bring them back again, and seeing him there getting meat and corn for his services in each year, and from buying two steers from Mr. Lea in 1847, one of which was injured at Wm. Pace's.

13th Int. by same. Please to state any circumstances or events by which you are enabled to determine the several dates given in your answers, and if you have any record showing the dates of such events, state what they are, and when you have last examined them.

Ans. I have no dates by which I can tell except the date of my marriage in 1847, which I examined yesterday morning. I can recollect where I staid at every year.

Cross-examination by Resp'ts' Sol.

1st Int. by resp'ts' sol. Did not Mr. Lea, when you saw him start to salt cattle as he said in 1843, when you say he started in the direction of the Gee Mountain, did he not also go the road he would have taken if starting to William Pace's, and when you saw the cattle drove in did they not come the direction they would have come from either place?

Ans. Mr. Lea started in the same direction he would have had to go if he had gone to Wm. Pace's, and the cattle would have come in the same direction if they had been driven from Pace's.

Re-examination.

1st Int. by compl'ts' agent. Please to state, as nearly as you can, at what time Caswell Lea brought his family to reside upon the Savannah farm, and also at what time the compl't, Wm. P. Lea, ceased to reside there.

Ans. I think Caswell Lea moved there in the fall of 1844; I am not positive as to that. Wm. P. Lea ceased to do business there about the same time that Caswell Lea moved there. And further this deponent saith not. ALLEN B. M. STEPHENS.

Silas M. Waln, a citizen of Bradley County, Tenn., aged fifty-three years, being next sworn, deposeth and says in answer to 1st interrogatory by T. E. D. Russwarm, Sol'r for compl't.

You will please state what you know in relation to William P. Lea, the complainant in this cause, entering land in the Ducktown Township of the Ocoee District, and the time when such entry was made, an the reasons why he made the entry.

Answer. I saw Mr. William P. Lea, and I think Calvin Maples pase my house inquiran for some cattle which they told me had bin run out of the mountain, and Mr. Lea stated that he intended to go to Cleveland when the land come to one cent an acor and enter him a clame, and then he would see who would run his cattle out of the range. I saw Wm. P. Lea some fue days afterward, about the time the land office opine at one cent, or with within a few days of that time, and I as ast him if he had maid his entery's that he had spake about, and said he had, I ast him wheare he had located, and he told me about Ducktown, but the time I can't state more than I have above stated.

2d Interrogatory by the same. Is there not some circumstance connected with this conversation, or with your interview in Cleveland which will enable you to fix the date of these conversations?

Answer. I can't state more than I think it weare in April, and I think it wear at April Court in Cleaveland, about the time the land office opind at one cent, but the year I don't recalect.

3d Interrogatory by the same. Please state at what time in April the Court you refer to met.

Answer. It weare the first Monday in the month.

Cross-ex. by Wm. F. Keith, Sol. for Respondents.

1st Int. Mr. Wann, please state who all were present when you had the last conversation with Wm. P. Lea, as detailed in the answer to complainant's interrogatory, and where did said conversation occur.

Ans. I don't recalect who wear present; if any, it weare in the town of Cleveland.

Int. 2d. What Court was sitting in Cleveland at the time you had that conversation with Wm. P. Lea?

Ans. It wear County Court, I think, quartley turm.

Int. 3d. How long after the land had been entered by Wm. P. Lea, was it that he told you about it?

Ans. I don't no how long, but I took it from his conversasian that just enterd it.

Int. 4th. Did Wm. P. Lea tell you he had entered land in the neighborhood where he had been herding his cattle, and where they run from?

Ans. I don't recalect that he said any about his cattle in Cleveland, but he said as I think when I ast him where he had located, he, Lea, said about Ducktown. I think was about the conversasian.

Int. 5th. How much land did Lea say he had entered?

Ans. I don't recalect that he said how much.

Int. 6. Was it on the same day that he had this conversation with you, that he said he had entered the land?

Ans. I don't no.

Int. 7th. In your answer to complainant's 1st int., you state that the last conversation with Lea was about the time the office opened at one cent an acre, or a few days afterwards; may it not have been as much as eight or ten days afterwards?

Ans. I don't now recalect the time the office opind at one cent, but the last conversasian with Mr. Lea weare duran April Court, as I have before stated.

And further deponent saith not. S. M. WANN.

Respondents by their solicitor except to the reading of the above deposition, because it is an attempt by complainant to introduce his own declarations as evidence for himself. 6 Nov., 1856.

WM. F. KEITH, *Sol. for Respondents.*

Interrogatories to be propounded to Dr. Pleasant J. G. Lea, of Big Cedar, Jackson County, State of Missouri.

Interrogatory 1. State your relationship to any of the parties to this suit.

Int. 2. State where you resided in the year 1842, giving the exact position of your dwelling with reference to the office of Entry Taker of the Ocoee District.

Int. 3. State what persons were employed in the office of said Entry Taker in the year 1842.

Int. 4. State where complainant resided from the year 1839 to the year 1854, as far as you know, and if absent from the State of Tennessee during that time; in what business did he leave the State; in whose employment; why he remained absent so long; when he returned; where lived for the year following; what was the state of his health during his absence from the State and afterward.

Int. 5. Have you any knowledge of complainant's having been in the habit of taking the cattle belonging to the farm on which he resided to the mountain range during the summer? and if so, where did he keep his cattle during the summer of 1842?

Int. 6. At what time did the price of unentered lands in the Ocoee District fall to one cent per acre?

Int. 7. Have you any recollection of the complainant being at your house about that time? if aye, state what you understood to be the object of his visit, and if it was to enter land, what lands he desired to enter, and whether he accomplished his object, distinguishing between lands in the vicinity of Hiwassee, Old Town, where he resided, and lands situated elsewhere.

Int. 8. Have you any recollection of his having been at your house at any subsequent time for a similar purpose? if aye, when? And state whether at either visit, stating which, you made out any "locations" (or applications for entries of lands) for him; and if aye, why did you make or write them, how many, and for what lands?

State whether, during this second visit (if such there was), he said any about any previous entries made by him, and if aye, state what was said.

Int. 9. When complainant resided in Cleveland where did he usually lodge? and state whether he was in the habit of conferring with you in regard to the interests of himself and matters connected with the farm where he lived; if aye, state whether you have heard him speak of obtaining from the office of the Register of the Ocoee District grants for lands entered by him at any time, and whether he complained of not being able to get certain grants that he ought to have had; and if aye, what grants, and when did he so complain, stating particularly the last time you may have heard such complaints, and especially whether you understood the lands for which the grants were missing (if any) to lie near the Savannah farm or elsewhere, as far as you can recollect, what number of grants he supposed to be missing.

Int. 10. Do you know, or can you set forth any other matters or thing which may be a benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? if aye, set for the same fully and at large in your answer.

NELSON, MEIGS, and SNEED,
Solicitors for Complainant.

WILLIAM PINCKNEY LEA
vs.
THE POLK COUNTY COPPER COM'Y, THOS. H. CALLOWAY, and others.

Cross-interrogatories filed by defendants to be answered by Dr. P. J. G. Lea, of Big Cedar, Jackson County, Missouri.

Int. 1. You will please state what was the condition as to property of the complainant in the year 1842. On whose farm did he then live? Who was the owner of the cattle that he had in the range in the mountains? And in whose employ was he then?

ROLLS, LYON, COOKE,
Sol. for Resp'ts.

He, the said Dr. Pleasant J. G. Lea, answered the first interrogatory as follows, viz.:—

I am a brother of William Pinckney Lea, complainant, and a brother-in-law of Thomas H. Calloway, one of defendants, and am in no way related to any other of said parties to my knowledge.

To the 2d Interrogatory he answers: I resided in Cleveland in the State of Tennessee, and next door to the entry taker's office of the Ocoee District, in the year 1842; both my residence and the said office being under the same continuous roof.

To the 3d Interrogatory he answers: The Hon. Luke Lea was entry taker, and employed as his assistants James Armstrong Lea and Francis W. Lea in the year 1842.

To the 4th Interrogatory he answers: As well as I recollect, complainant resided at the Hiwassee Old Town farm, then owned by Caswell Lea, from the year 1839 till about the year 1845, and at the time that Caswell Lea and complainant had a settlement, or not long after settlement, said complainant removed to the State of Alabama, and was employed for a time in transacting business for the firm of Inman, Calloway, and witness, on the Tennessee River, and after some months spent in their service, lived at the house of Houston H. Lea in Madison County, Alabama, for some two or three years, most of which time he had very bad health, being first attacked with violent fever, from which he recovered pretty much, and was again attacked with the same disease or something like it, and continued to be in ill health until his return to Tennessee, perhaps in 1848 or thereabouts, precise date not recollected, and on his return he, complainant, desired to live at my house, and he truly being an object of pity, his health gone, his memory and intellect very much impaired, and suffering constantly by diseased liver, was not competent to do business of any kind, and during his stay at my house continued to suffer much depression of spirits, and all the time looked very badly, and was scarcely able to do anything for more than a year after he came to live at my house; nor had he the memory nor judgment to transact business from the effects of his long continued illness in Ala., and which continued illness was the cause of his long stay in Alabama. And indeed he, complainant, had but little memory of past events, nor much judgment to transact business for years afterwards.

To the 5th Interrogatory he answers: I recollect that he, complainant, while transacting business for Caswell Lea, used to take said Caswell Lea's cattle and possibly a portion of his own to the mountains to graze them in the summer and fall seasons, and in the summer of the year 1842, as well as I recollect, he kept them in or about Ducktown, in Polk County, Tennessee.

To the 6th Interrogatory he answers: As well as I recollect, on the 5th day of April, in the year 1842, the price of lands in the Ocoee District fell to the sum of one cent per acre.

To the 7th Interrogatory he answers: As well as I can recollect, complainant came to my house on the evening of the 4th day of April, in the year 1842, and stayed all night, and said he had come to enter some lands (he and a Mr. Taylor, whose given name I cannot now call to memory), not far from the Hiwassee Old Town farm. Also complainant said he wished to enter some lands at or near Ducktown, for the purpose of securing certain and uninterrupted range for his cattle, alleging at the time that he was determined to have a legal claim there near Ducktown, where he had previously taken his cattle, but which was run out of the range, because the said complainant did not own any land there. But owing to some difficulty, the nature of which I now do not recollect, said complainant and said Taylor agreed at the time not to enter the lands near the

Hiwassee Old Town farm on said 5th day of April, 1842, but to go and examine the lands, and come back in a few days and enter to suit each one of the parties, which they afterwards did, as well as I recollect, on the 15th day of April, 1842. But on the morning of the 5th day of April, in the year 1842, before any one came in, I went into the entry taker's office, which, as before stated, was next door to that of my dwelling, in company with said complainant, and said complainant told James Armstrong Lea that he disliked to be coming into the office before the usual hour of opening said office, but must apologize for so doing by saying he was in a hurry to go home, or something to that effect, and wished to make some entries in or near Ducktown, for the purpose of range for his cattle, but he, said complainant, did not know exactly where Ducktown was on the map, and desired the said James Armstrong Lea to show him on the map, which he readily did, and recommended complainant to make the entry or entries which he pointed out as being on a stream, as represented on the map, which would suit said complainant for water as well as grass for his cattle, which said entries said complainant made at said time as selected for him. But I do not now recollect the precise range, but think it was probably in the 5th range, east basis line, but cannot say what township, section, or quarter sections the entry or entries were made in now; after a lapse of some thirteen years, and scarcely ever thinking about the transaction from that day till this, of course I cannot recollect all the minutiæ. Said James Armstrong Lea wrote the locations for the entry or entries, and signed William P. Lea's, the complainant's name, to the same, at said complainant's request, as said James Armstrong Lea was an expert pensman, and knew exactly how to draw such instruments, and then placed the same on the map on the precise place or places that he, the said James Armstrong Lea, had selected for said complainant, who then paid the entry money and fees of office, and went out of the office remarking that he, complainant, could then take his cattle where he pleased without molestation, or something to that effect.

To the 8th Interrogatory he answers: I recollect of said complainant and said Taylor coming, I think, on the 15th day of April, in the year 1842, and making the entries that they had intended to make on said 5th day of April, in the year 1842, near the Hiwassee Old Town farm, but were prevented as before stated in answer to the 7th interrogatory, and I am of the impression that there are five of the entries or locations which said complainant made at that time in my handwriting, and some four in said complainant's handwriting, and perhaps some of said Taylor's locations of that date in my handwriting, and I also loaned said complainant some money to make the entries of said 15th day of April, in the year 1842, and I think the money will be found charged in my books, now in the hands of Thomas H. Calloway. The reason I wrote said locations for said complainant was that he requested me to do so, alleging

that he might make a mistake, as it was a very particular job, and I, having been a great deal about and in the office, knew all about doing such business, I consented to write some of them, and after writing several of them, as above stated, and directing him how to write the balance, he concluded to try to write the balance, which he did, and then entered the lands as aforesaid, near the Hiwassee Old Town farm. I do not recollect if said complainant said anything about his previous entries, except perhaps to brag a little more about stopping those mountain fellows from driving off his cattle.

To the 9th interrogatory he answers: When complainant resided at Cleveland he usually lodged at my house; also when he resided at the farm, when on an occasional visit to Cleveland, he also lodged with me frequently, and would frequently confer with me in regard to his own interests and the interests of the farm which he was conducting for Caswell Lea, and have heard him grumbling about the tardiness of the arrival of his grants, some of which I think he never got possession of before leaving the State of Tennessee for Alabama as before stated, nor do I know that he has got some of them yet, though I cannot now say what particular grant or grants that may not have reached him, when I left Tennessee for Missouri, or until now, not having charged my memory with matters which I then considered of so small moment, nor can I now recollect the number of grants that he said was yet due him, when he was complaining about not having got them.

To the 10th interrogatory he answers: I shall state generally that I have not considered said complainant, even at best, to be a business man; being so honest himself, and of an unsuspecting disposition, and believing every body honest, he has always been an easy prey to sharp and unscrupulous men, and it is just in keeping with all the balance of his management of his own affairs through life thus far, that he is now before this honorable court as a complainant; whereas if he had had the good furtune to have had the mind and memory and sagacity to have claimed his rights long ago, much useless trouble and vexation would have been saved to himself and others, and his just rights would not, by long seeming neglect, have suffered as they may eventually, for want of timely attention. Begging the pardon of the hon. court for this seeming digression, I shall proceed to state, that repeatedly have I remarked to complainant whilst at my house, and endeavoring to assist me in the store, doing no doubt the best he could, that he could not do business, nor ought he to try, and that he was losing for me more than he was making, by reason of his believing everything as truth that any one, however trifling and irresponsible, might state to him, as promises to pay; and have frequently reprimanded him in terms so severe that I have felt sorry for so doing afterwards, in view of his providential disability in almost every way, physically and mentally. Being a practising physician myself, and having known his physical and mental condition all the time, I shall say most clearly does his condition demand sympathy

from all who knew him, that are not interested, as well as those interested; and further cannot say as to matters in dispute between the parties, except that I have ever entertained for the defendant, Mr. Calloway, none other than the kindest feelings, and have found in him a true friend and a gentleman of high bearing and a well earned reputation for honesty of purpose and correctness in all his dealings with his fellow citizens; and must further add, that I exceedingly regret the circumstances under which I have been compelled to give testimony in this case between friends and relations for whom I have ever entertained the highest regard. I am now in my forty-ninth year of age since November last past, and am a resident of, and reside in Jackson County, in the State of Missouri.

To the cross-interrogatory in said case he answers: 1st. I am of opinion that said complainant had but little property in the year 1842. 2d. He lived on Caswell Lea's farm, and who was principal owner of the cattle then in the mountains, and of course was in the employ of said Caswell Lea.

And further this deponent saith not.

PLEASANT J. G. LEA.

John N. Taylor, aged about 47 years, being sworn on the Holy Evangelists of Almighty God, deposeth as follows:—

1st Interrogatory by complainant's agent. Are you acquainted with the parties in this cause?

Ans. I am acquainted with complainant and with some of the defendants.

2d Int. by same. Please to state whether you were notified to attend as a witness in this cause, on behalf of respondents, at Cleveland, on 24th of last month; whether you so attended at that time; and whether your deposition was then taken; if not, why was it not taken.

Ans. I was notified to attend at Cleveland as a witness in this cause, on behalf of respondents, about that time. I did attend, and, from a conversation with Thos. H. Calaway, I was by him released without taking my deposition at that time.

3d Int. by same. Did you notify complainant that you were going to leave Cleveland without giving your deposition at the time named in your last answer?

Ans. I did not notify complainant, but I left with Calaway's consent, with this promise, if he wished to take my deposition at Benton, I would come to Benton without being subpœnaed.

4th Int. by same. Had you any conversation at Cleveland with Thos. H. Callaway, or any of the other respondents, or any person acting for them, in relation to the evidence that you would give in this cause?

Ans. I had a conversation with Thos. H. Calaway on that subject.

5th Int. by same. Please to state whether you were notified to attend at Benton on the second instant as a witness in behalf of the

complainant; whether you so attended; whether your deposition was then taken; and, if not, why: and also state who were present here in this room at that time, being parties, solicitors or agents in this cause.

Ans. I was notified to attend at Benton on the second instant. I did attend. My deposition was not taken. John B. Hoyl was here in this room as solicitor for respondents, as I understood there might have been others concerned. I don't recollect distinctly who all were in the room. J. B. Hoyl objected to taking my deposition for want of legal notice. A. M. Lea was in the room. John Caldwell and Wm. P. Lea were in town at the time, and may have been in the room.

6th Int. by same. Please to state when you first became acquainted with complainant; where he then resided; how long he lived there; and in what business he was engaged.

Ans. My first acquaintance with complainant was in the year eighteen hundred and thirty-eight; he was attending to the Savannah farm for Caswell Lea, receiving rent corn the first year. He remained on the farm some six or eight years. The time he left I don't now recollect. During his stay he was engaged attending to the business of the farm and stock.

7th Int. by same. Did you understand that complainant was a partner of Caswell Lea, in the profit of the Savannah farm, during any part of the time he lived there?

Ans. If he was a partner I don't recollect of hearing it at this time.

8th Int. by same. Please to state where you now live; how long you have lived there; how far and in what direction your dwelling is from that where complainant lived on the Savannah farm; whether your house is on the road usually travelled by complainant in going to Benton; the county seat of Polk County, and also to Cleveland.

Ans. I live five miles from Benton, and two miles from where complainant did live. I live near the public road leading from Benton past the Savannah farm. Complainant frequently past my house in going to and from Benton and Cleveland. I have lived there twenty-one years.

9th Int. by same. Please to state, as nearly as you can, where the cattle belonging to the Savannah farm were kept during the grazing seasons of each year, from 1840 to 1847, inclusive, with the names of the persons who herded them in each year.

Ans. The cattle belonging to the Savannah farm, according to my recollection, were kept the year forty and forty-one on the mountains south of Hiwassee River, in sight of the Savannah farm. I don't think they were herded either of them seasons. I understood they were kept near the Little Frog Mountain in the year eighteen hundred and forty-two, and were herded by William Watkins. I have heard a good deal said about their cattle being kept by Wm. Pace,

Larkin Rutherford, and perhaps others, but don't recollect who kept them first or last.

10th Int. by same. Were the cattle of Col. J. C. Maples kept in the range with those of the Savannah farm during any of the years from 1840 to 1847? and, if aye, state which of those years.

Ans. I don't know, of my own knowledge, but understood Col. J. C. Maples' cattle were kept with Mr. Lea's cattle the year eighteen hundred and forty-two, and from that time until forty-six or seven, but was not in the range where they were herded any of the time after they commenced herding together.

11th Int. by same. If you are well acquainted with the place where complainant salted his cattle in the years 1840 and 1841, please to state whether it is near to running water, and whether it is near the top of Bean's Mountain.

Ans. I am acquainted with the place where complainant kept and salted the cattle belonging to the Savannah farm, near the top of the Bean Mountain, in the year 1840 and 1841; there was running water close to their lick logs.

12th Int. by same. Please to state whether the cattle of complainant and Col. Maples may not have been kept at Lea's usual salting grounds, on Bean's Mountain, in the year 1842, without your being aware of the fact.

Ans. I entered the land where Mr. Lea had kept and salted his cattle before the year 1842. I kept and salted stock at his old lick logs, and I have no recollection of seeing any of his cattle on Bean's Mountain in the year 1842. I was frequently there during the grazing season, and saw none of Lea's cattle, to the best of my recollection. I camped two nights on the mountain, near Lea's old lick logs, and there was none of Lea's cattle about us. I well recollect either of them nights. Francis M. Taylor, and Samuel Weir, and A. G. Weaver, I believe, were the persons who staid with me. It was some weeks before harvest the time Weir and A. G. Weaver staid with me.

13th Int. by same. Please to state what you may know in regard to the cattle of complainant and Col. Maples being driven out of the mountains during the time they were herded by Wm. Watkins.

Ans. I know nothing, of my own knowledge, but heard a good deal said about it in the settlement, about the time, by Wm. P. Lea and others.

Resp'ts except to the above answer as mere hearsay evidence, and as giving the statements of compl't. J. B. COOKE, *Sol.*

14th Int. by same. Please to state when the price of unentered lands in the Ocoee District fell to one cent per acre, and how you recall the date to memory.

Ans. The lands in the Ocoee District fell to one cent per acre on the fifth day of April, 1842. I entered land on that date.

15th Int. by same. Please to state whether you heard of complainant and Col. Maples' cattle being run out of the range, as stated in your

last answer but one, before or after the price of lands in the Ocoee District fell to one cent per acre.

Ans. My recollection is, that I heard of their cattle being run out of the range before the land fell to one cent per acre.

16th Int. by same. Did you go to Cleveland on the fifth day of April, 1842? if aye, at what time of the day did you arrive there, and did you see complainant in the Entry Taker's office on that day?

Ans. I went to Cleveland on the fifth day of April, 1842. I arrived there, as well as I now recollect, about ten or eleven o'clock. I saw complainant in the land office on that day.

17th Int. by same. Had you and complainant previously made any agreement to meet at the Entry Taker's office on the fifth of April, 1842.

Ans. None that I recollect of.

18th Int. by same. Please to state what occurred between you and complainant in the Entry Taker's office at Cleveland, in regard to the entry of lands, on the fifth of April, 1842.

Ans. In the land office at Cleveland, on the 5th of April, 1842, by some means which I don't recollect, I saw the locations for 640 acres of land on the Bean Mountain, which complainant said he was going to enter for Caswell Lea. I told him his locations did not cover the land Caswell Lea wanted. He, complainant, did not enter said land on that day.

19th Int. by same. Was Dr. P. J. G. Lea with complainant in the Entry Taker's office when you saw him there on the 5th of April, 1842?

Ans. My recollection is he was.

20th Int. by same. Do you know whether complainant made any entries of land lying near the Savannah farm on the 5th April, 1842.

Ans. I do not.

21st Int. by same. Did you and complainant ride home together on the 5th April, 1842? if aye, state whether any conversation occurred between you on the road in relation to his having entered land in the mountains for grazing purposes, on that day.

Ans. We travelled home from Cleveland that evening and night; what conversation we had on that trip home I don't distinctly recollect.

22d Int. by same. Please to state whether you and complainant were at the Entry Taker's office together on the 15th April, 1842, and whether he made any entries of lands in the vicinity of the Savannah farm on that day.

Ans. Complainant and I were in the land office on the 15th April, 1842. Complainant entered 640 acres on Bean's Mountain on that day.

23d Int. by same. Please to state who wrote the locations for the

lands which you say were entered by complainant on the 15th April, 1842.

Ans. My present recollection is, that Dr. P. J. G. Lea rote the locations for said entries.

24th Int. by same. Please to state whether you and complainant returned home together on the 15th April, 1842; and, if aye, state what conversation occurred between you and complainant, if any, at that time, in regard to lands entered by him in the mountains for the purpose of privilege of range.

Ans. Complainant and I rode home together on the 15th April, 1842, and from my recollection, he stated to me, either on the 15th or on the fifth, and I don't recollect which, that he had entered land in the mountain for the privilege of range.

25th Int. by same. Please to state whether complainant described to you, as you rode home on the 5th or 15th April, 1842, how the land entered by him, in the mountains, was situated as to water.

Ans. My recollection is that he claimed to have water and range.

26 Int. by same. In the conversation last alluded to, did complainant say that the land which he had entered in the mountains "lay along on a creek?"

Ans. I have no recollection that he did.

27th Int. by same. Did complainant tell you during your ride home on the 5th or 15th April, 1842, when he had made the entry of the land in the mountains?

Ans. If he did I don't recollect it.

28th Int. by same. May not the land which complainant said he had entered in the mountains, be that land which you say he entered on Bean's Mountain on the 15th April, 1842, or some other land entered by him on that day, contiguous to the Savannah farm.

Ans. Complainant alluded to land entered in the range where Lea and Maples' cattle were, and not to land entered near the farm, as I understood him.

29th Int. by same. Please to state whether you ever heard of the cattle of Lea and Maples being run out of the range after the complainant told you that he had entered lands in the mountains.

Ans. I never did.

30th Int. by same. Please to state whether you have now before you a map of Polk County; if aye, state who made said map, and whether you believe it to be correct; and then state how far it is, in a direct line measured on said map, from the former residence of complainant on the Savannah farm to the land in dispute.

Ans. I have before me a map of part of Polk County, embracing the former residence of complainant and the land in dispute, which I believe to be correct, made E. P. Douglass, Clerk of the county court, from Giddings map, the distance by measurement on said map is about twenty-one miles.

31st Int. by same. If you are acquainted with the general character of complainant, please to state what it is.

Ans. I am; his general character is that of an honest man.

Respondents by their solicitor except to the 24th, 25th, 26th, 27th, and 28th interrogatories propounded to the witness, and the answers thereto, because said questions are leading and indicate the answers desired, and because by said questions and answers the statements or declarations of the complainant are introduced and sought to be made evidence for him. J. B. COOK, *Sol.*

Cross-examination.

1st Int. by resp'ts' sol. How far is the Bean Mountain from the Savannah farm, and on which side of the Hiwassee River?

Ans. The Bean Mountain is on the south side of Highwassee River opposite the upper end of the Savannah farm.

2d by same. On which side of Hiwassee River is the Gee Mountain, and how far is it from the Savannah farm?

Ans. The Gee Mountain is on the north side of the Highwassee River, and is about ½ mile from the upper end of the farm.

3d by same. How far is the 640 acres of land entered by compl't on the 15th of April, 1842, in the Bean Mountain from where the complainants resided in 1842, and was it not entered for grazing purposes?

Ans. It is about four miles from where complainant resided in 1842, and was entered for grazing purposes as I understood.

4th by same. How far is it from where compl't resided upon the Savannah farm in 1842, to Copper Hill in Ducktown by any road that was then travelled?

Ans. I had never travelled to Ducktown at that time, but from travelling through the mountain trail since, I suppose it would be between 25 and 30 miles.

5th by . What mountain trail do you refer to?

Ans. I meant the Greasy Creek trail, across Little Frog Mountain.

6 by same. At what time in the spring of the year has it been usual or customary for people to drive their cattle into the range in that section of country where you live, from before 1842 to this time?

Ans. It is usual to drive about the first of April, but that is a custom varied according to the season; some years grass is later and some years earlier.

7 by same. When you and compl't arrived at the land office in Cleveland on the 5th of April, 1842, did you not find a large and dense crowd in and around the office, and was it not exceedingly difficult to get into the office?

Ans. Complainant and I did not go to Cleveland together, on the 5th of April, 1842; when I arrived there there was a dense cloud in and about the office.

8th by same. Was it not exceedingly difficult to get to file locations for land on that day owing to the large crowd that were eagerly

pressing into and around the office endeavoring to get their locations filed, and were not the doors of the office kept closed on that day to keep the crowd from pressing in upon the officers?

Ans. My recollection is that I made some 8 or 10 entries on that day, and I think I went into the office though it was crowded, and I entered in the evening; about getting into the office I am not positive.

9th by same. Were not the locations received by the officers in at the window on that day?

Ans. If they were, I don't recollect it now.

10 by same. Did persons filing their locations on that day hand them in one at a time, or did they hand them in all together?

Ans. I don't recollect whether I handed my locations in all at once or one at a time; the entries I made on that day, I think I made them without any intermission.

11 by same. What time of day was it, as near as you can recollect, when you saw compl't with the locations which you told him were wrong?

Ans. I think it was about two or three o'clock in the evening.

12 by same. Did you see compl't have any other locations that day, or did he show you any others except those that you told him were wrong?

Ans. None, to the best of my recollection.

13 by same. When you told him his locations were wrong, did he say anything to you about having filed any locations or made any entry of land that day?

Answer. Not that I recollect of.

14th by same. When you told him his locations were wrong, did he not then tell you that he would decline making any entry that day, but that he would go home and get them correct, and then go back and make his entries?

Ans. When I told him his locations were wrong, he insisted they were right, and Dr. P. J. G. Lea heard our conversation, and proposed for him to go home, and go out and examine the numbers on the land, before he made the entry, which he agreed to, and I went with him far enough to convince him of his mistake, and he afterwards, on the 15th of April, 1842, made the entries.

15 by same. Did you not state to respondent Calloway, in a conversation you had with him shortly after this suit commenced, that you did not believe that complainant made any entry of land on that day (the 5th April, 1842), and give as your reason for not believing so, the circumstance of your informing him that his locations were wrong, and what he had said to you on that occasion?

Ans. I had a conversation with respondent Calloway since the commencement of this suit, as I understood. I don't think I gave my opinion as to whether complainant made any entries on that day or not, as I did not recollect of seeing him till in the evening. Mr. Calloway seemed to doubt complainant's being in Cleveland on the

5th of April, 1842, and I stated that he was there, and went on to give the reasons in which I told him of his locations for the land on Bean's Mountain being wrong, and went on to tell Calloway how that mistake was rectified.

16th by . Did you not tell him (Calloway), in a conversation you had with him since this suit was brought, that you had never heard of the cattle of Lea and Maples having been run out of the range until after the 15th of April, 1842?

Ans. I did not.

17 by same. Were you not frequently in the habit of travelling to and from Cleveland with complainant, attending the courts there, during the years 1843 and '4, and may it not have been in some of those times that complainant had the conversation about his cattle having been run out of the range, as stated by you in the former part of this deposition?

Ans. I attended court, at Cleveland, for a number of years. I don't recollect what year my suit, which led me there, was disposed of. I have frequently travelled with complainant. I am satisfied that the conversation alluded to in the former part of this deposition did occur either on the 5th or 15th of April, 1842; and I so stated it to Mr. Calloway, in Cleveland, on the day I attended there, when subpœnaed by respondents.

18th by same. State if you know anything about complainant having gotten permission from Francis W. Lea to graze his cattle in the mountains in the year 1843 or '4.

Ans. I do not.

19th by same. Does not the 640 acres of land entered by complainant in the Bean Mountain afford both water and range for cattle.

Ans'r. It affords range and water except in the latter part of the season of a dry year, on the top of the mountain; there may be water behind, the year round; I have not been off behind, in dry times.

19 by same. Was not the conversation you had with Mr. Calloway at Cleveland, before referred to by you, in which you agreed to attend here, and give your deposition, if desired, without subpœna, brought about by you, and on account of your desire to get home?

Ans'r. The first conversation I had with Mr. Calloway, after this suit was brought, was short. I was in the act of starting home. I recollect of no other conversation with him until I was subpœnaed to attend at Cleveland. When we first talked in Benton, I had not thought of the old land entries for years, and after our talk I studied over old times. I recollected things I did not at our first interview, and felt it my duty to state them to him, which I did, and upon that statement he released me, as above stated. I brought about the conversation with Mr. Calloway.

Re-examination.

1st Int. by complainant's agent. Please to state from what source you understood complainant to have derived his knowledge of the lands which he told you he had entered in the mountains.

Answer. At the time he told me he had entered land in the mountain, I have no recollection of his stating anything about how he got his information.

Resp'ts, by their solicitors, except to the last above question and answer, because it introduces the statement of complainant as evidence for him. COOKE, *Sol.*

2d Int. by complainant. In the conversation you had with complainant, in returning from Cleveland, on the 5th or 15th of April, 1842, if he assigned any reason for making the entries of land in the mountains, please to state what those reasons were.

Ans'r. He gave no other reason than his cattle having been run out of the range.

Respond'ts, by their sol., except to the last question and answer, for the same reason assigned in their last exception.

J. B. COOKE, *Sol.*

And further this deponent saith not. JOHN N. TAYLOR.

Amos Carter, aged about 54 years, being next called and duly sworn according to law, deposes and says :—

1st Inter. by compl'ts' sol. Please state where you lived in 1842, and where you now live.

Ans. I lived in Polk County, Tennessee, in 1842, in the sixth district, near the broad shoals on Hiwassee River. I now live in Hamilton.

2d Inter. by same. State whether or not you saw the compl't's cattle going from the Savannah farm, on Hiwassee River, to the mountains about Ducktown, in the year 1842; and if so, give the time of year as near as you can.

Ans. I seen complainant and Calvin Maples drive out their cattle in the year 1842. I think in the month of March. I then thought it very early to drive out stock to range; they crossed their cattle at the broad shoals on Hiwassee River.

2d Inter. by same. Did you hear anything of said cattle being run out of the mountains, and if so, state how long after they were taken to the mountain, and when, and under what circumstances you heard of it? Tell about it.

Ans. Some of the cattle returned a short time after they were driven out. They came to my house and remained about there several days. I understood from William Watkins (the keeper of the cattle), and from others, that the cattle were run out of the range by covering a yearling with a bear skin.

3d Inter. by same. State whether or not you met with compl't on

the 5th day of April, 1842; and if so, state where it was, and what were the circumstances under which you met.

Ans. I met with complainant at Cleveland on the 5th day of April, 1842. I went there for the purpose of making entries, and I supposed that to be his business also. I made entries that day, and compl't made entries, I think more than one on the same day. I think the entry taker on the 7th gave public notice that we might go home and return on the 15th, as he wanted time to make up the record. I met with complainant on the morning of the fifth, before breakfast, at the store of Dr. Lea. What made me observe and mind these things so positively, was that I had suspicions of complainant and others making entries adjoining me.

4th Inter. by same. Where was it that you wanted to enter land which you feared compl't and others might want, and state also whether or not compl't told you, while in the store of Dr. Lea, what lands he wanted to enter?

Ans. The land I wished to enter was called the fish trap quarter, and I don't recollect whether or not complainant told me what land he wanted to enter.

5th Inter. by same. Did you enter the fish trap quarter? and how do you know that it was on the 5th of April, 1842, that you met compl't in the store of Dr. Lea?

Ans. I did not enter the fish trap quarter, owing to the location being made out so that the Entry Taker could not understand it, and he wrote me a letter on the last of April or first of May to come down and see to it; when I went down complainant had entered it.

6th Inter. by same. Did Luke Lea, the Entry Taker, show you the lands on the map of the district which had been entered by complainant at the time you went there? and if so, state what parts of the Ocoee District compl't had made entries, as near as you can.

Ans. I think the Entry Taker showed me, on my request, where complainant had made entries. One on Bean's Mountain. I think he said he had made some in Ducktown. I then inquired whether it was William Park Lea or William P. Lea, that had made the entries, and he replied that it was Wm. P. Lea. I could not read the record myself, and received my information only from the Entry Taker.

Respondents, by their sol., except to the last above question and answer, so far as relation to the statements of Luke Lea, because they are mere hearsay, and incompetent to be given in evidence.

J. B. COOKE, *Sol.*

7th Inter. by same. State whether or not Luke Lea told you how he was able to distinguish the entries made by compl't from those made by Wm. Park Lea; and if so, how did he do it?

The respondents, by their sol., except to the above question be-

cause the statements of Luke Lea attempted to be introduced would be mere hearsay and incompetent evidence.

J. B. COOKE, *Sol.*

This exception is overruled. SAM'L HAMILL, *Com'r.*

Ans. Luke Lea told me when looking over the record, when I inquired of him how he distinguished between the two William Leas on their entries, that one was (that is complainant) put down W. P. Lea, and the other Wm. Park Lea, as they were in the habit of signing their names.

8th Inter. by same. State whether or not s'd Luke Lea was in his office at the time pointing out to you what lands had been entered and what ones were vacant, so as to aid you in making your entries?

Ans. He was in his office at the time, and giving me information on that subject.

9th Inter. by same. What Dr. Lea do you speak of, when you say you met the compl't at the store of Dr. Lea?

Ans. He was in Cleveland. He was a brother of Wm. P. Lea.

8th Inter. by same. Can you give any fact which enables you to determine the fact that you met complainant at Cleveland, April 5th, 1842?

Ans. I know it was the same time, from the fact that I went on that day to put in my locations, and it was at that time I met with compl't.

9th Inter. by same. Are you acquainted with the general character of Young and Elias Davis, or either of them?

Ans. I think I am, having known them about twenty years.

10th Inter. by same. From the general character of Young and Elias Davis, do you think they, or either of them, are entitled to credit on oath?

Ans. I would not consider they were when interested.

Cross-examined by Resp'd'ts' Sol.

1st Int. Did you see the compl't make any entries of land on the 5th April, 1842? If so, how many did he make?

Ans. If I did, I do not now recollect, but am satisfied I saw him in the office several times.

2d Inter. From what then have you stated that he made entries that day?

Ans. From the information I got from Luke Lea when I went back.

3d Inter. Did you know that Luke Lea had a son by the name of Wm. Park Lea when you went to the land office on that day?

Ans. I did.

4th Int. How came you to ask Luke Lea how he could distinguish between the entries of compl't and Wm. P. Lea?

Ans. I had heard in the neighborhood of their both making

entries, and wishing to know which had entered adjoining me, think was the cause of me making the inquiry.

5th Inter. How near did you ever live to either Young or Elias Davis, and when did you leave that country?

Ans. I lived in sixteen or eighteen miles of them when I lived in Polk County; I moved from that country, I think, in eighteen hundred and fifty-one, and have been frequently back there since.

6th Inter. Did you ever know or hear of either of them having been impeached, or their oaths questioned in any court? if so, state when and where.

Ans. I think I have, of Young Davis in Benton, Polk County, in a case between the Conners and Davises. If ever I did of Elias Davis, I don't recollect it.

7th Int. Was your own oath ever impeached in that court? if so, state how often.

Ans. The witness refuses to answer this question, and the council for complainant objects to this question on account of its not being legitimate.

On further consideration the witness waives his objection, and goes on to answer the question.

Ans. There was an effort made at one time to impeach my oath in that court, but they failed to do so. They called up some two or more raged witnesses, small shot stock, and to confound them I called up John Shamlin, Sheriff, Polk County, and John F. Hannah, who sustained me together, Thomas Crawford and some others, their names not now recollected.

8th Int. Who were the ragged witnesses who impeached you on that occasion?

Ans. I do not now recollect their names, but think it was some of them little scrubs about Ducktown and Greasy Creek. And further this deponent saith not.

his
AMOS + CARTER.
mark.

Caswell Lea's 2d Deposition.

The respondents, by their solicitor, George W. Rowles, come and ask the witness the following question before he has been examined by the complainant, to wit:—

Question. Are you the same Caswell Lea whose deposition has been heretofore taken by the complainant in this cause?

Ans. I am.

And the witness being the same person who has been previously examined by the complainant in this suit, the respondents by their solicitor except to the further examination of the witness by complainant, with the view of the introduction of said witnesses testimony that he may now give as evidence on the hearing of the case; and show the following as cause of exception, that said examination,

under the circumstances, is in violation of those rules of practice which obtain in a Court of Chancery, unless on order of Court, on an Honl. Judge's order of this Court, on proper grounds being laid in the master's office specifying the matters to be examined to, in advance of the taking of the deposition.

GEO. W. ROWLES, *Sol. for Respondents.*

The exceptions overruled by the commissioners, and the compl't permitted to examine the witness. WILLIAM LOWRY,
Com'r.

1st Interrogatory by complainant's agent. If fatted cattle were sent by you from the Savannah farm to the Augusta market at any time, please to state in whose charge they were sent, how many, and when; referring to any written documents by which you are enabled to recall the facts.

Ans. William Pinckney Lea took from the Savannah farm between thirty and forty fatted cattle to the Augusta market (I do not recollect now precisely the number), in the spring of 1844, which date I have in a letter written to myself, while I lived in Dandridge, Jefferson County, Tennessee, by said William Pinckney Lea.

2d Inter. by same. Where were the cattle belonging to the Savannah farm kept in the range during the grazing season previous to the time the fatted cattle were sent to the Augusta market, as stated in your last answer?

Ans. They were grazed on the Chestnut Mountain either in 1842 or 1843, I do not recollect distinctly which.

3d Inter. by same. Were the cattle of Col. J. C. Maples herded with yours on the Chestnut Mountain?

Ans. They were not.

4th Inter. by same. How long were the fat cattle sent to the Augusta market in 1844, kept about the Savannah farm?

Ans. I brought them down from Jefferson County in the spring of 1840 to the Savannah farm.

5th Inter. by same. Were the cattle sent to the Augusta market a part of those kept by Watkins on the south side of the Hiwassee River?

Ans. They were.

6th Inter. by same. Where did Dr. P. J. G. Lea live in the year 1842?

Ans. In Cleveland, Bradley County, Tenn'e.

6th Inter. by same. Describe the position of his house in reference to the office of the Entry Taker of the Ocoee District.

Ans. The office of the Ocoee District was kept in one end of his house.

8th Inter. by same. Are you well acquainted with the handwriting of P. J. G. Lea?

Ans. I am.

9th Inter. by same. Are the papers, now shown you by the com-

missioner, being original locations for lands in the Ocoee District. Nos. 6991, 6992, 6993, 6994, and 6995, in the name of William P. Lea, dated 15th April, 1842, in the handwriting of Dr. P. J. G. Lea?

Ans. I think they are all in the handwriting of Dr. P. J. G. Lea, there seems to be an alteration in two of them which I cannot say was done by him, but the body of those two I think was written by him.

10th Int. by same. If you are acquainted with the handwriting of the complainant, Wm. P. Lea, state whether the papers now shown you by the commissioner, being original locations for lands in the Ocoee District, Nos. 6983, 6984, 6996, and 6997, in the name of William P. Lea, dated 15th April, 1842, are in the handwriting of said compl't.

Ans. I am acquainted with the handwriting of Wm. P. Lea, and believe they are all in his handwriting, but dated 13th April, 1842.

11th Int. by same. Do the locations just shown you in the handwritings of Dr. P. J. G. Lea and Wm. P. Lea, cover the lands, which in your former deposition you spoke of as having been entered near the Savannah farm for your benefit?

Ans. I cannot answer this question for the want of the original deed or a copy of it.

Cross-examination.

1 Question. Do you know about the time the complainant in this cause filed his bill against the respondents? if so, you will please state it.

Answer. I think it was something over a year since, the precise date I do not know.

Question. You will please give the year in which Francis W. Lea returned from the west, and the time of the year, as near as you can? What business had said Francis been engaged on in the west?

Ans. I do not know the date he returned from the west, neither do I know his business there, only from the say so of others.

Question. Do you know the fact of his having been absent from his residence in Bradly County?

Ans. He was, I believe, absent from his family.

Question. Please state the length of his absence as near as you can, and the year, if you can, of his final return.

Ans. I think he was absent a year or more, and returned perhaps eighteen months or two years since.

Question. You will please state if the lands, or a part of the lands of Francis W. Lea, in Bradly County, were sold during his absence.

Ans. I do not recollect certainly whether they were or not, but I think his negroes were.

Question. Please to state whether or not said Francis, from causes growing out of this sale, or for other reasons, said Francis' feelings

on his return to his home in Bradly County, were friendly or unfriendly towards the respondent, Thomas H. Calloway.

Ans. I think they were unfriendly.

Question. State whether you do or not know from conversations with said Francis W. Lea, that his feelings were those of decided hostility towards Calloway.

Ans. I have no reollection of F. W. Lea ever having any conversation with me, particularly on the subject of his land or negroes, but have heard him speak in hard terms of Mr. Calloway.

Question. Have you or not heard him say that he would have satisfaction out of Calloway, or a threat of like import?

Ans. I do not recollect of any such conversation.

Question. Have you or not ever heard him say, that Calloway should be no gainer by his conduct? or, if not that, that he, Francis W. Lea, would be even with him. And if he has not had any conversation of this kind, with you, or in your presence, has he not had conversations of similar import?

Ans. I cannot say that I ever heard him say anything of this kind, but has said, he, Calloway, had treated him badly and abused him, but no threats.

Question. Please state whether you know, or have reason to believe that this unfriendly feeling of said Lea towards Calloway existed on up to the time of the filing of complainant's bill in this cause.

Ans. I think he had unkind feelings towards Mr. Calloway, perhaps up to the time of the filing of complainant's bill.

Question. You will please state if you ever at any time before the filing of the complainant's bill in this cause, were in the Entry Taker's Office at this place with the complainant, if so, who else were with you?

Ans. I do not remember of ever being in the Entry Taker's Office at this place with the complainant.

Question. Were you ever there before the filing of the bill with Francis W. Lea and Albert Miller Lea?

Ans. I never was.

Question. You will please state if you ever examined, at any time or place, any of the papers relative to this suit before the filing of the bill in this case.

Ans. I never did examine any of the papers except at one time, say in the month of February, 1854. I was in the land office with F. W. Lea looking at the map of the Ocoee District, in the region of Ducktown, for the purpose of seeing where some lands lay that James S. Bradford claimed. I was going up there to look out copper lands, and wished to see where his lands lay. F. W. Lea put his finger on the piece of land marked on the map, that he remarked was claimed by Park Lea, and remarked at the time that that piece of land was not claimed by the proper owner. I did not interrogate him who the proper owner was.

Question. Had you heard before this, and if so, from whom, that the complainant put up any claim to the land pointed out to you?

Ans. I had not, that I recollect of.

Question. Was the land pointed out by said Francis, the land in controversy in this suit?

Ans. I suppose it is, for he remarked it was Copper Hill.

Question. You have stated that you did not interrogate him as to who the proper owner was. Did he state or give any information as to whether complainant might put up a claim to the same?

Ans. He did not.

Question. How long after this occurred before you first heard of complainant's claim, and from whom did you derive the information?

Ans. Some time in the following summer, I was told by John Wornble, near the corner of the old Railroad Hotel, that Billy Lea (to use his own expression), was claiming that property, and had commenced, or would commence suit for it. The same day I met with F. W. Lea on the pavement near Pickens' store door, he told me the same thing; these two gentlemen were my first informants.

Question. Had you then seen the complainant? and if not, how long after this was it before you seen him?

Ans. I had not seen him then for some time, and it was some time after that time, he came to my house and told me he had been up to Knoxville to see Mr. Sneed on the subject of this suit; this was the first time he had ever named it to me.

Question. At this time had the bill been filed?

Ans. I think not.

Question. What did complainant say his business was?

Ans. He did not say, that I recollect of.

Question. Do you know that he went to Francis W. Lea's while in the county this time?

Ans. I do not know that he did.

Question. Did he or not, tell you he was going to said Francis W. Lea's; and if he did not so tell you, did he inquire for said Lea, or say that he wished to see him?

Ans. I do not remember that he said anything about going to F. W. Lea's; he, perhaps, may have said he would like to see him.

Question. How long did complainant remain in the county at the time spoken of, and do you know whether he got to see said Lea before he left the county?

Ans. I do not know, or remember how long the complainant remained in the county, nor do I know that he got to see said Lea before he left the county.

Question. Please state whether complainant at any time before the filing of his bill, told you he expected to derive advantage or assistance in the prosecution of his alleged claim from Francis W. Lea?

Ans. He told me he expected to have F. W. Lea for a witness,

but I do not remember whether it was before or after the filing of the bill.

Question. Give your best recollection or belief as to the time.

Ans. I have nothing by which I can recollect more certainly either way; he was about my house very little until after the bill was filed.

Question. Before the bill was filed, were you or not asked to go security for the prosecution of the suit?

Ans. I was before, or about the time of filing the bill, asked to do so.

Question. By whom were you asked, by complainant or another person for him?

Ans. I was asked by both, as my memory now serves me.

Question. Name the person besides complainant, who so requested you.

Answer. A. M. Lea.

Question. By A. M. Lea, do you mean Albert Miller Lea, the gentleman who has been attending to the getting up of depositions and proofs in this cause for complainant?

Answer. I mean Albert Miller Lea, the gentleman who has been attending to the getting up of depositions and proofs in this cause for complainant.

Question. Was the gentleman alluded to down at Cleveland, or at Francis W. Lea's before the filing of the bill; and if so, do you know what business he was on, did he tell you?

Ans. He was down at Cleveland on the subject of this suit, but I do not recollect whether it was before or after the filing of the bill.

Question. While he was so down, did he tell you whether or not he had any conferences with Francis W. Lea, relative to complainant's alleged claim to the land in dispute?

Answer. I think he told me he had.

Question. Did you or him, while so in conversation, say anything of the unfriendly feeling entertained by Francis W. Lea towards respondent Calloway?

Ans. There was something said in that relation.

Ques. Please state whether it was you or Albert Miller Lea, that spoke of this unfriendly feeling of F. W. Lea to Calloway.

Ans. I cannot now say which of us named it first.

Ques. What was said on this subject? Give the substance of it as nigh as you can; and the reason why the unfriendly feeling was spoken of.

Ans. I do not remember what was said particularly on the subject, but the substance of it was, that F. W. thought the land in dispute was Wm. Pinckney Lea's.

Ques. Do you wish to be understood as saying that this was the substance of what was said about the unfriendly feeling between Calloway and F. W. Lea?

Ans. I do not mean to say that this suit was the cause of the unfriendly feeling of F. W. Lea towards Mr. Calloway.

Ques. Please state if in the conversation about the unfriendly feeling of Lea towards Calloway, that unfriendly was thought to be in favor of the complainant's prosecution of his claim, or what was said about the unfriendly feeling, as near as you can recollect.

Ans. I cannot say that in the conversation it was thought that F. W. Lea's unfriendly feeling towards Mr. Calloway, would be in favor of complainant's prosecution of his claims. I cannot recollect what was said about this unfriendly feeling.

The further examination adjourned until to morrow morning 10 o'clock. January 10th, 1856. WILLIAM LOWRY, *Com'r.*

Examination of Caswell Lea resumed, January 11, 1856.

WILLIAM LOWRY, *Com'r.*

Cross-examination resumed, according to Adjournment.

Question. Please state who furnished the money to pay for the perfection of the grants for lands entered as an appendage to the Savannah farm.

Answer. Wm. P. Lea paid the money for the perfection of those grants, as they were all lifted by him.

Ques. At what time, or in what year, did he lift the grants alluded to?

Ans. I cannot now recollect; he got them at different times.

Ques. In what year did you move your family from Dandridge to the Savannah farm?

Ans. My family arrived at the Savannah farm in June, 1844.

Ques. Were any of the grants handed to you before that time?

Ans. I think they were.

Ques. Give your best recollection whether or not you had not received into your possession all the grants for lands entered by complainant for you, near or adjacent to the Savannah farm, and for which he afterwards made a deed to you, before your removal to the Savannah farm.

Ans. My impression is they had not all come to hand before that time.

Ques. Please state your reason for believing they had not all come to hand.

Ans. I don't know that I can give any better reason than they came to hand very much scattered.

Ques. You will please to state if, at the date of the deed of William P. Lea to you, of the 11th February, 1846, the said grants were all, at that time, in your possession, that is, the grants covering the land conveyed by said deed.

Ans. From my best recollection, they were.

Ques. You will please state where the complainant was living at the date of said deed to you.

Ans. I cannot recollect certainly now, without more thought on that subject.

Ques. After you moved from Dandridge to the Savannah farm,

was it one, two, or more years before the complainant ceased to make that place his home?

Ans. He lived a while there, perhaps, until the following summer of 1845; then I think he went to Virginia, with Col. Biggs and myself, with cattle.

Ques. Did he again return to your residence at the Savannah farm in the year 1845, after said cattle were disposed of?

Ans. He did, and remained in my service until the 16th Dec'r, 1845.

Ques. What business did he then embark in? name it, or what business did he tell you he was going to embark in, on his return to your house, in 1845?

Ans. I cannot recollect certainly, but it seems to me he told me he was employed by P. J. G. Lea, Thomas H. Calloway, and James W. Inman, to take a boating trip to Alabama.

Ques. What season of the year was it he left your house for this purpose—was it in the fall or winter of 1845, or spring of 1846?

Ans. I think it was in the first of the year 1846, perhaps in January.

Ques. His deed, the complainant's to you, before alluded to, is dated the 11th February, 1846; was that deed executed at your residence at the Savannah farm?

Ans. It was.

Ques. At its date, 11th February, 1846, had complainant then went down the river on the boating trip you spoke of, or had he been down the river, and returned before the making of the deed?

Ans. As well as my memory serves me, I think he had gone up to assist about a boat that had been stove. After he got through with the job, he came to my house, I think after his clothes, and returned to prosecute his boating trip; that was the time he signed the deed.

Ques. When he left your house, had he an intention of returning again into your service, or was it his intention to embark in business pursuits elsewhere?

Ans. He had no intention of returning into my service; his intention was to embark in business elsewhere.

Ques. When the Savannah farm, and the lands alluded to in the deed of the 11th February, passed from you, what became of the original grants to the land covered by said deed?

Ans. I passed them all over to John McGhee.

Ques. Have you seen any of them since, and do you know where they or any of them now are?

Ans. I have not seen any of them since. Of my own knowledge I do not know where they are. Mr. Witmore told me they were in New York.

Ques. You will please look on the following original locations, shown to you by the commissioner, marked on the back as locations No. 6997, 6996, 6984, and 6983; are they or not in the handwrit-

ing of complainant? and if so please give the description of the land as set forth in the location, by its range, township, section, quarter section, and basis line.

Ans. I believe they are in the handwriting of complainant; the description as follows, to wit: 6997 calls for the remainder of the south east qr. of section 29, fractional township tract, range 3 east of the basis line, Ocoee District; beginning on the northeast corner of said section," 120.

Also 6996, 160 acres of land, being the S. E. qr. of S. 6, in T. 1, R. 3 E. of the basis line, Ocoee District.

Also 6984, 160 acres of land, being the northwest quarter of section thirty-three, in fractional township two north, range 3 east of the basis line, Ocoee District.

Also 6983, 40 acres of land in the S. W. c. of the S. W. qr. of S. 28, frac. T. 2 N., R. 3 E. of the basis line, Ocoee District."

Ques. You will also look on the original locations, now shown you by the commissioner, respectively numbered 6991, 6992, 6993, and 6994, and 6995; are said locations or not in the handwriting of Dr. P. J. G. Lea? Give the description of the land as described in each number of the location.

Ans. I believe they are in the handwriting of Dr. P. J. G. Lea; description as follows, to wit: 6991, the northeast quarter of section 31, fr. township 2 north, range 3 east, basis line Ocoee District.

Also 6992, the southwest quarter of section six, in township one, range 3 east, basis line Ocoee District."

Also 6993, the northwest quarter of section eight, township one, range 3 east, basis line Ocoee District.

Also 6994, the northeast quarter of section seven, township one, range 3 east of the basis line, Ocoee District.

Also 6995, the southwest quarter of section five, in range 3 east, township one, basis line Ocoee District.

Question. The nine locations you have described in your answer to the two preceding questions, do all of said locations on their face purport to be made in the name of William P. Lea?

Ans. They do.

Ques. You will please state if the deed of William P. Lea to you of the 11th February, 1846, conveyed all these lands described in said locations.

Ans. I think it did, if the copy of said deed now before me, is a true copy, as certified by the Register of Polk County, Tennessee, where it was recorded.

Ques. You will please state if the copy of the deed to which you have referred, does not contain another tract of land, for which there is now present no original location; if so, you will please state how this piece of land covered by said deed as certified, for which there is no location present, is described in the certified copy of your deed from complainant.

Ans. It does contain one piece more, the description of which is

as follows, to wit: The southeast quarter of section thirty-one, range three East, Fractional Township Two. The further taking of this deposition adjourned over till to-morrow morning, 9 o'clock. January 11th, 1856. WILLIAM LOWRY, *Com'r.*

Deposition of Caswell Lea resumed, Jan'y 12th, 1856.
WILLIAM LOWRY, *Com'r.*

Question. Please look on the register of the Ocoee District's book of registered grants, now before you, and state whether or not, grant as therein registered No. 6260, embraces and covers the land designated by locations Nos. 6984 and 6997, two of the locations before referred to in this deposition as being in the handwriting of the complainant.

Ans. It does, as appears from the record.

Ques. In said registered grant, as originally registered, in whose name does the registration appear first to have been, and in whose name does the grant now stand, as granted? if any alteration, state how it appears to have been done, and in whose handwriting are the locations.

Ans. It appears first to have been made in the name of William Park Lea; as it now stands it is in the name of William P. Lea, the *ark* seems to have been taken off where it occurs after the capital letter P; the locations are in the handwriting of complainant.

Question. Look in the same book of registered grants, upon grant No. 6258, in whose name does said grant appear to have originally stood, who is the name of the grantee as the registration now stands, if any alteration, how made? Also state whether or not this grant covers the land embraced in location 6996, herein before alluded to, and is said location in complainant's handwriting.

Ans. It appears originally to have stood in the name of William Park Lea. It stands now in the name of William P. Lea, the *ark* seems to have been taken off where it occurs after the capital letter P, and covers the land embraced in location 6996, as appears from the record. The location is in the handwriting of complainant.

Ques. Look on the book of registered grants now before you, of the Ocoee District, and state in what name grant No. 5764 appears to have originally stood in, and in whose name does it now stand, if any alteration, how made. Give the number of the location in which said grant purports to have issued, and state whether the original location is, or not, in the handwriting of complainant, and does said locations describe the land covered by the grant?

Ans. Grant No. 5764 appears to have stood in the name of William Park Lea originally; it now stands in the name of William P. Lea; the *ark* seems to have been *erased* by the pen. The number of location 6983 covers the land in said grant, and seems to be in the handwriting of complainant.

Ques. You will please state whether or not the alterations referred to in the three grants to which you have been examined, are not

plain and obvious, and if also the way the grants originally stood as to the grantees name are not plain and obvious.

Ans. The alterations in the three grants referred to, seem plain and obvious, also the way the grants originally stood as to the grantees are plain and obvious.

Ques. The four locations to which you have been examined as being in the handwriting of your brother, the complainant, and the three grants covering the lands embraced by said locations, you will please, if the complainant by his deed of 11th February, 1846, conveyed those lands to you, as well as other lands, mentioned in said deed.

Ans. I think he did.

Ques. Does not the certified copy of the deed from him to you cover those lands as described in the locations and grants referred to?

Ans. It does.

Ques. You will please look on the original location, now shown to you by the commission, and marked on the back No. "7147." Do you know whose handwriting said location is in? is it in the handwriting of either the complainant, or of his brother, Dr. P. J. G. Lea?

Ans. I do not know whose handwriting it is in. I do not think it to be in the handwriting of Dr. P. J. G. Lea, or complainant.

Question. On the face of said location, who is it that purports to be the enterer of said land? Give the name as set out in the location.

Ans. William P. Lea.

Ques. Look on the register of the Ocoee District book of registered grants, and state whether or not grant 5766 purports to be founded on entry or locations No. 7147, and state whether said grant covers in its description the same piece of land described in the location, give the name of the grantee, as it appears in said book of grants.

Ans. Grant No. 5766 purports to be founded on entry or location No. 7147; said grant covers in its description the same piece of land described in the locations; it is granted to William Park Lea, as appears on said book.

Ques. Does not said piece of land lie near to some of the land conveyed by complainant to you, in his deed of 11th February, 1846? how many acres by the grant purports to be in it?

Ans. It does lie near to some of the land conveyed by complainant to me in his deed of 11th February, 1846. It purports to have 80 acres.

Ques. You will please now give the description of the land as set out in the location and grant, and also state, whether in the map or plan of the Ocoee District, the name of "Wm. Park Lea," is not written as the enterer.

Ans. West half of the northwest quarter of section 34, Ocoee District, the name of Wm. Park Lea is written as the enterer.

Ques. Have you or not no list of the lands on which you paid taxes in Polk County? State whether you ever claimed or exercised any act of ownership over said 80 acres of land.

Ans. I have a list of a part of the lands I paid taxes on in Polk County. I never claimed said land or paid taxes, that I know of, on said 80 acres.

Ques. In the year 1846, please state, if a man by the name of Thomas Crawford lived in the neighborhood of said land. And do you or not know that he claimed to have purchased the same from William Park Lea?

Ans. Thomas Crawford did live in the neighborhood of said land, but I cannot recollect whether it was in 1846 or not. I do not know who he claimed to have purchased his land from.

Ques. You have previously in your examination stated, that according to your best recollection, you had all the original grants for the land conveyed to you, by complainant, at the date of his deed of 11th February, 1846, but state also in your examination that you have no location for the last piece of land described in said deed. You will now please state whether subsequent reflection and examination has, or not, satisfied you that you never had a grant for the piece of land last described in the deed, to wit, the southeast quarter of section thirty-one, range three east, fractional township two.

Ans. Upon examination, I am satisfied that I was mistaken as to having all the grants for the lands conveyed to me by complainant. There seems to be one that I had not received, to wit, the last named piece in said deed, the southeast quarter of section 31, range 3 east, fractional township two, as represented in a memorandum which I have found among my papers since this deposition has been going on.

Ques. You will please state who furnished you with the memorandum to which you allude, when was it given to you, before or after, or at the time of making the deed of 11th February, 1846, of complainant, and state the object of its being given to you. Are all the lands described in it included in the deed referred to, and also more lands than said memorandum embraces? How many acres does said memorandum include?

Ans. William Pinkney Lea furnished me with the memorandum to which I allude. It was given to me before the deed of 11th Feb'y, 1846; the object of its being given to me was to show in part the land he had entered. All the lands described in it are included in the deed referred to. It also includes more land than the memorandum calls for.

Re-examination.

1st Interrogatory by complainant's agent. When A. M. Lea, com-

plainant's agent, has visited Cleveland, in regard to this suit, has he at each time he so visited Cleveland, also visited at your house?

Answer. I believe he has.

2d Int. by same. When did said agent first visit Cleveland on said business?

Ans. I do not recollect the precise time, but I think it was in the summer of 1854.

3d Int. by same. Have you any knowledge of said agent having met at Cleveland, R. J. Meigs, of Nashville, when on his way to court at Knoxville, at the first term of the U. States Circuit Court after the commencement of this suit?

Ans. I have no such knowledge.

4th Int. by same. Do you know about what time the cholera broke out at Knoxville in 1854?

Ans. From my best recollection it was in September or October, 1854.

5th Int. by same. Do you recollect whether A. M. Lea, Jr., nephew of said agent, was at Cleveland in company with the complainant during the year 1854? and if so, state at what time or times in said year.

Ans. About June, he perhaps may have been in July.

6th Int. by same. At what time did the complainant first inform you that he had engaged the services of A. M. Lea as his agent in the prosecution of this suit? Was it before or after the visit of complainant to Knoxville, alluded to by you in this deposition, when he went there to consult Col. Sneed?

Ans. It was on his return from Knoxville that he told me he had been up to consult Sneed, and had engaged A. M. Lea's services in said suit, from the best of my recollection.

6th Int. by same. Did you understand from complainant that he had or had not ever seen or corresponded with the said A. M. Lea on the subject of this suit, before this visit to Knoxville just alluded to?

Ans. I have no idea of complainant ever having written or seen A. M. Lea on the subject of this suit before this visit to Knoxville. My understanding was that he never had.

7th Int. by same. Did not A. M. Lea, Jr., meet complainant at Cleveland, and go with him to Nashville, return to Cleveland, go to Ducktown, again go to Nashville with him, and return to Knoxville with him before the filing of his original bill in this cause?

Ans. I do not know that they did of my own knowledge, from the fact that I did not accompany them to either of those places, but understood from them both that they had gone together to all those places as stated in the question.

8th Int. by same. Were these visits of A. M. Lea, Jr., before or after complainant's visit to Knoxville, when he first consulted Col. Sneed?

Ans. I think after he consulted Col. Sneed.

9th Int. by same. Was the first visit of A. M. Lea, agent of complainant, to Cleveland, before or after these visits of A. M. Lea, Jr.?

Ans. After, from my best recollection.

10th Int. by same. Was the first visit of A. M. Lea, agent of complainant, to Cleveland, before or after the cessation of cholera at Knoxville?

Ans. After the cessation of the cholera. In my answer to the 2d interrogatory, I was mistaken, after looking at the date of the bill filed in this suit, I find it dated 29 September, 1854, and it was after the filing of the bill he made his first visit.

11th Int. by same. Please to state any circumstance by which you are enabled to recall the fact that the first visit of complainant's agent to Cleveland was after the cessation of the cholera at Knoxville.

Ans. I remember when you came to my house we were speaking of you leaving your family, and of your attention to those who had the cholera.

12th Int. by same. At the first visit of A. M. Lea, agent of complainant, did he say to you that he had had an interview with Thos. H. Calloway shortly after his arrival and before he had seen either yourself or Francis W. Lea?

The respondents by their solicitor, Geo. W. Rowles, except to the foregoing question as incompetent evidence, because the compl't cannot introduce and make the declarations of his agent, evidence in his behalf. GEO. W. ROWLES.

The commissioner sustains the exception.
WILLIAM LOWRY, *Com'r.*

13th Int. by same. Have you heard Thomas H. Calloway, one of the respondents in this case, in this room, since the commencement of this deposition, in conversation admit that A. M. Lea had called on him (Calloway) before he, the said A. M. Lea, had gone out to see Francis W. Lea on the subject of this suit?

Ans. I remember that there was something said between you and Mr. Calloway on that subject, but I paid no attention to what was said, and cannot state what was said.

14th Int. by same. Please to state whether the paper now shown you, marked exhibit A, to this your deposition, is the same to which allusion has been made in this deposition as a certified copy of a deed from the complainant to you, dated 11th February, 1846.

Ans. It is.

15th Int. by same. If you have ever claimed and exercised acts of ownership over a certain lot of land known as "The Fish Trap," lying on the Hiwassee River, and embracing a well-known fish-trap in said river, please to describe, as nearly as you can, the position of said tract, and state what acts of ownership, if any, you have exercised over it. The fish-trap alluded to lies above the mouth of Spring Creek.

Ans. I have claimed and exercised an ownership over a certain lot of land and water, on which was a well-known fish-trap, a short distance above the mouth of Spring Creek, in the Hiwassee River, embracing the first large shoal; I put Hezekiah Cook in possession of it, who used the fish that was caught in it during the time he was in possession of it; I have in my own family used fish caught in it, and also cut and used timber on said lot of land; the trap was known as the Crawford Fish Trap; it is known throughout the whole neighborhood that I claimed the ownership of it.

Re-examined.

Question. The fish-trap to which you allude, is it situated on either of the tracts of land conveyed to you by complainant's deed of 11 February, 1846?

Ans. Agreeable to the way in which the river is laid down on the map, I consider it embraced in said deed; it was run out by John F. Hannah some years since, and I supposed it to be on the northwest quarter of section 33, range 3 east, fractional township 2 north.

Ques. Was this called the Crawford Fish Trap from the circumstance of its having been put there by a man of the name of Crawford?

Ans. I do not know from what source it derived the name.

Ques. Did not a man by the name of Thomas Crawford own land near to the fish-trap alluded to?

Ans. He did.

Ques. Please state if said Crawford continued to live there when you removed from the Savannah farm.

Ans. He did not.

Question. How long had he moved before you left the Savannah farm, and to whom did he sell out?

Ans. I do not remember how long, but I think a year or two, neither do I know to whom he sold his land.

Question. What year was it you moved from the Savannah farm in, and state whether said Crawford was living at the place alluded to, when you moved your family to the Savannah farm in 1844?

Ans. In 1850 I left the Savannah farm; my impression is, he was living in the neighborhood of the place alluded to, but cannot say on that place at the time I moved to said farm.

And further this deponent saith not. CASWELL LEA.

Claims not. WILLIAM LOWRY, *Commis'r.*

Exhibit A to the Deposition of Caswell Lea.

WILLIAM LOWRY, *Commissioner.*

Copy.

"This indenture, made this eleventh day of February, one thousand eight hundred and forty-six, between William Pinkney Lea, of the one part, and Caswell Lea, of the other part—Witnesseth, that

for and in consideration of one hundred dollars, paid and secured by the said Caswell Lea to the said William Pinkney Lea, of the first part, who does hereby bargain, sell, and convey, unto the said Caswell Lea, and his heirs forever, the lands hereinafter described, situated on and near the Hiwassee River, also near the gap of the Chilhowee Mountain, near the upper end of the farm on which the said Caswell Lea now lives, in Polk County, Tennessee, in the Ocoee District, being the southwest quarter of the fifth section, first township, third range east of the basis line; and the southeast and southwest quarters of section six, first township, third range east of the basis line; and the northeast quarter of section seven, first township, third range east of the basis line, and the northwest quarter of section eight, first township, third range east of the basis line; and the northeast quarter of the thirty-first section, second fractional township north, third range east of the basis line, and the remainder of the southeast quarter of the twenty-ninth, and the northwest quarter of the thirty-third sections, second fractional township north, third range east of the basis line; and the southwest corner of the southwest quarter of the twenty-eighth section, second fractional township north, third range east of the basis line; and the southeast quarter of section thirty-one, range three east, fractional township two, with all and singular the hereditaments and appurtenances thereto belonging, to have and to hold the same to the said Caswell Lea, and his heirs forever, against the lawful title, claim and demand of all persons whomsoever, the undersigned of the first part will warrant and defend.

In testimony whereof, he has hereto subscribed his name and affixed his seal the date first above written.

WM. P. LEA, [SEAL.]"

Witness: JOHN N. TAYLOR,
JAMES HAWKINS.

STATE OF TENNESSEE,
Bradly County.

Personally appeared before me, John H. Robertson, Clerk of the County Court for the County of Bradly aforesaid, William P. Lea, the bargainer named in the foregoing deed, a man with whom I am personally acquainted, who acknowledged the execution of the same on the day it bears date for the purposes therein expressed.

Witness my hand at office, November the 14th, 1848.

State tax 24 cts. JOHN H. ROBERTSON, *Cl'k.*

"STATE OF TENNESSEE,
Polk County.

November 15th, 1848, 2 o'clock P. M. Then were the foregoing deed and Clerk's Certificate registered in my office in Benton, in Book B, pages 421–423.

ROB'T N. FLEMING, *Register.*"

Register's fee $3 25.

STATE OF TENNESSEE,
Polk County.

I, Rob't N. Flemming, Register in and for the County and State aforesaid, hereby certify that the foregoing is a true and correct copy of the deed William P. Lea to Caswell Lea, and of the Clerk's and Register's Certificates thereto, as now remaining of record in my office.

Given under my hand at office in Benton, this 3d day of October, A. D. 1855. ROB'T N. FLEMING,

Register in and for Polk County, Tennessee.

Register's fee $3 37½.

Deposition of J. C. Hood.

STATE OF TENNESSEE,
Polk County.

I, James Smith, commissioner by virtue of the commission hereto prefixed, have, on this 5th day of November, 1856, caused to come before me at the court-house in Benton, Polk County, Tennessee, J. C. Hood, James Glass, William Cowden and Silas M. Wann,

As witnesses on behalf of complainant in a certain matter of controversy now pending in the Circuit Court of the United States for the District of East Tennessee, held at Knoxville, wherein Wm. P. Lea is complainant, and the Polk County Copper Co. and others are respondents, who, being duly sworn on the holy evangelist of Almighty God, deposeth as follows: John C. Hood, aged about 34 years, deposeth as follows:—

1st Interrogatory by complainant's agent, A. M. Lea. Please to state where you lived in the year 1842.

Answer. I lived in Polk County, on the waters of Hiwassee River.

2d Int. by same. If you have ever lived on the farm formerly belonging to Caswell Lea, known as Hiwassee Old Farm, on the Big Savannah, please to state how long, and when, as nearly as you can.

Answer. I lived there from the first of March till corn was *layed* by about the 15th of July; what year, I can't now say.

3d Int. by same. Please to state whether H. Jones Carter lived on the Savannah Farm the same year you lived there.

Answer. Jones Carter lived on the Hiwassee River, on the south side of the Savannah, up near the mountain, the same year that I lived there.

4th Int. by same. If you know anything about certain cattle having been herded in the mountains by one William Watkins, please to state whose cattle they were, whether it was the year you lived on the Big Savannah, or before or after that date, where they were herded, and if they were run out of the range by any means, please to state how and by whom.

Answer. There was a lot of cattle taken out to the mountains the

same year that I lived there, and they *was* known as the Lea and Maples cattle; the cattle was kept as I understood by William Watkins, and the cattle *was* run out, but I can't tell who by.

5th Int. by same. Please to state what was done by Lea & Maples, if anything, in consequence of their cattle having been run out of the range.

Answer. My understanding was that Mr. Wm. Lea went to Cleveland and got his relative, the Entry Taker, to select a suitable place in the mountains to keep cattle, and he entered there.

6th Int. by same. From whom did you have this information?

Answer. It was from Elias Weaver, a brother-in-law of mine, that I was cropping with on the Savannah that year.

7th Int. by same. How did Elias Weaver come to know anything of what Lea & Maples did about entering lands?

Answer. This man, Weaver, and Mr. Lea and Maples were very intimate at that time, and frequently together, and Wm. Lea told him how he had managed the thing to keep his cattle for the pasture.

8th Int. by same. Please to state whether Weaver or Lea ever described to you the character of lands that Lea had entered to keep his cattle for the future.

Answer. I cannot tell which of them, but one or both of them have given me the description of the land entered by Wm. Lea; he or they told me that the Entry Taker had selected a place in the mountains that had water on it.

9th Int. by same. Please to state where Elias Weaver now lives.

Answer. He now lives in Murray County, Georgia, six miles south of Spring Place and Holly Creek.

And further this deponent saith not.

JOHN C. HOOD.

Deposition of Wm. A. Watkins.

Wm. A. Watkins, aged about 30 years, a witness for compl'nt, being next called and duly sworn according to law, deposes and says:—

1st Quest. by compl't's sol. Please state whether or not you ever lived at or near Ducktown, Polk C'ty, Tenn., and if so, state when and how long you lived there.

Answer. I lived at Turtletown near to Ducktown about three months, but can't recollect the date.

2d Quest. by compl't. Do you know where Copper Hill or the Luther Wallace improvements were?

Answer. I do not.

3d Quest. by compl't. Do you know where the Wm. Watkins cabin was situated? I mean the cabin he occupied while herding cattle.

Answer. The first season he herded cattle he stayed at home, and the next season he stayed in a cabin, I believe, on the waters of Ocoee River, six or eight miles below Ducktown.

4th Inter. by same. Whose cattle did he keep the two years you have named?

Answer. He kept some for Wm. P. Lea, and others.

5th Inter. by same. Please state what years he kept cattle for Wm. P. Lea, and give any circumstance that may enable you to fix the year.

Answer. I think the first year he kept was eighteen hundred and forty-one, and then in the year following; the last year, was at the cabin.

6th Int. by same. What month did he take the cattle out each year?

Answer. I can't say at what time, but I believe about the time cattle could live well.

7th Inter. by same. Do you remember the time that land first was entered at one cent per acre in the Ocoee District? and if so, state when it was,

Answer. I do; it was in April 5th, 1842.

8th by same. Do you remember whether Wm. P. Lea's cattle were taken to the mountain before April 5th, 1842? Can you call to mind any circumstance that will enable you to tell how this was?

Answer. I can tell.

9th. Are you a son of William Watkins? and also state whether or not you lived with him in 1841 and 1842.

Answer. You a son of Wm. Watkins. (So reputed) but did not live with him much either of the years. I lived a part of the time with my father, and a part of the time on Coco Creek.

Adjourned the further taking of deposition until 8 o'clock A. M. to-morrow, Sept. 16, '56, this Sept. 15, 1856.

SAM'L HAMMILL, *Com'r.*

Resumed Wm. A. Watkins' examination, at 8 o'clock A. M., Sept. 16, '56, at office of Welcher & Key, Chattanooga, Tenn.

SAM'L HAMMILL, *Com'r.*

10th Int. by same. Please state how far your father built the cabin from where he lived, and how far it was from the Ocoee River.

Answer. I think it was about nine or ten miles from where my father lived, and about a mile or mile and half from Ocoee River.

11th Int. by same. Please give the names of the men for whom your father kept cattle in 1841, and also in 1842.

Answer. He kept for Robert Cannon, Thomas Gilbreath, and probably for Calvin Maples, in 1841, and for the year 1842 I have no positive recollection that he kept for any except Lea and Maples.

12th. Did you hear anything of compl'nt's cattle being run off with a bear skin from the mountains? and if so, what year was it in?

Answer. I heard it talked of in the neighborhood, and it was done with a bear skin; this was in the year 1842; and I understood they were run from the range about the cabin before alluded to.

13th Int. by same. Please state any circumstance that enables

you to fix the date to be the same as that when lands fell to one cent.

Answer. The circumstance that makes me recollect the time was that it was in the year I worked on Coco Creek, which was the year 1842. I came down from there and loaned money to Henry Ellis for the purpose of entering land at one cent per acre. Mr. Ellis was considered good at that time, but I have never got my money back.

14th Int. by same. Please state whether or not you ever called to see Francis W. Lea for the purpose of buying or entering land in or near Ducktown, and if so, tell when it was and whether he was at the time in the Entry Taker's office at Cleveland.

Answer. I never called on him but met with him at Robert Williams', I think about six years ago. I inquired of him if he owned land in Ducktown. He replied that he did not recollect whether he owned any there or not, but that he owned land in Turletown. I then referred *A* the number of lot which I wished to purchase; he then said he owned that lot, and I contracted for it. I had inquired of him if he owned any land in the neighborhood of old Man Mills; he replied that he did not recollect, but stated that William P. Lea owned land in Ducktown.

15th Inter. by same. State what Lea was indicated? was it the compl't in this case or W. Park Lea?

Answer. I am unable to say which of the men was intended; he only mentioned William P. Lea, and being acquainted with him, the impression was made on my mind that it was the complainant.

16th. State whether or not Wm. Park Lea was generally known by the name of Park Lea. Did you know him at that time by the name of Park Lea?

Answer. I did not of him at that time either by that name or any other. Since that time I have heard of Park Lea, but was never personally acquainted with the man.

Cross-ex. by Resp'ts' Sol.

Quest. 1st. Please state how far the cabin of which you have spoken is from the John Davis Mill.

Answer. I can't tell, as I never was there.

Quest. 2d. Please state whether the cabin was above or below the Big Frog Mountain.

Answer. It was below.

Quest. 3d. In your answer to compl't's 3d interrogatory, you say the cabin was six or eight miles below Ducktown; state whether or not you mean by that the nearest settlements in Ducktown.

Answer. I mean the nearest settlement of what I understand to be Ducktown, but I am not certain where the district line is.

And further this deponent saith not.

W. A. WATKINS.

Deposition of Francis W. Lea. Sept. 1855.

Francis W. Lea, aged 33 years, a witness next sworn and examined by complainant's agent.

Question 1st by complainant. Please to state who were the clerks or assistants of Luke Lea in the office of entry taker of the Ocoee District, in the 5th day of April, 1842.

Answer. James A. Lea, William Smith and myself, sometimes Euclid Waterhouse and William Park Lea; they assisted at night and until the entries were arranged.

Question 2. Please to state whether James A. Lea is now living, and what was the age of Wm. Park Lea on 5th April, 1842, and where said Park Lea now resides; and what is their relationship to the late Luke Lea to yourself.

Answer. James A. Lea died some years ago in Mexico; William P. Lea was aged 16 or 17 years, he now resides in Missouri, they was sons of the late Luke Lea, and brothers of mine.

Ques. 3. At what date did the mentioned lands in the Ocoee District, by law, become enterable at the price of one cent per acre?

Answer. On the 5th day of April, 1842.

Quest. 4. If you recollect, please to state, whether there were many persons in the entry taker's office on that day, and whether the office was closed for some days after, how long and why.

Answer. My recollection is that there were many persons at the office on that day. The office was closed or suspended from that day until the 15th day of April, so as to close up the business that accumulated on the 5th day of April.

Ques. 5. Please to state from memory, or by reference to the books of the entry taker and register's office now open to you, whether Wm. Park Lea had entered any lands in the Ocoee District previously to the 5th day of April, 1842.

Answer. I have examined the book of entry taker's office, and do not believe he made any entries except at 1 cent per acre.

Ques. 6. State whether Wm. Park Lea made any entries of land on the 5th day of April, 1842, how many, and on which side of the basis line were such entries, omitting the land in dispute.

Answer. I have examined the records, and find twelve entries made west of the basis line, on the 5th day of April, in the name of William Park Lea, and I find two entries made on the east side of the basis line, made the same day, to wit, 5446 and 6115.

Ques. 7. In making entries of land at one cent per acre, was it usual for the enterers to examine personally the lands before entering them? Please to state what was your own practice and that of Wm. Park Lea, as far as you know.

Answer. If you allude to the land itself it was not, unless it was perhaps a settled——; but most persons examined the map so as to obtain the proper description.

Ques. 8. Please to state whether there is any instance among all

the entries made by Wm. Park Lea, wherein he entered a part of any quarter section leasing the residue of the same quarter mentioned, omitting the land in dispute.

Answer. I do not know how many. One I have found since your question was made. He entered the west ½ and I entered the east ½ of No. W. quarter of section 34, fractional township 2, No. and range 3 east, &c., at all events is marked on the map or general plan Wm. Park Lea.

Ques. 9. Please to state whether Wm. Park Lea, or his brothers in the entry taker's office with him, were themselves personally acquainted with the region now known as Ducktown, or had agents there to examine lands for them, previously to the 5th April, 1842.

Answer. As to the others I do not know. I had no agent there, but knew of the country. Persons who came to enter land had told me of the county, and I believe I furnished John Rodgers, and others perhaps money to enter lands up there.

Ques. 10. If you can, please to state whether the lands entered by Wm. Park Lea at one cent per acre, examined at all by him in person before entering them.

Answer. It is my impression he did not, in fact I know all were not examined by him.

Ques. 11. State, if you can, whether Wm. Park Lea had ever been in the vicinity of the land in dispute in this case, previously to the 5th April, 1842.

Answer. It is my impression he did (not see the land). I was a member of the same family, and would probably have heard of such a trip.

Ques. 12. Please to explain, as nearly as you can, from memory and by reference to the records, the circumstances connected with the entry of the lands in dispute; also the discrepancy that appears between the official map, and other records in the office in relation to the northwest quarter of section 22, township 4 south and range 5 east, together with all facts and circumstances that may tend to elucidate the question as to who made the original entries of the east half of the quarter section just named, and also the east half of the southwest quarter of section 15, same township and range.

Answer. The land in dispute in entry 5446, and is marked on the map Wm. P. Lea; on the day-book, or a book which was kept for the convenience of the entry taker, it is marked William Park Lea, which last named was done by me, that is, it is in my handwriting. The northwest quarter of section 22, is marked on the map in the name of James Davis, and it appears to have been scratched, as if some other writing had have been erased; William Park Lea made entry No. 6115, which covers the east ½ of the said quarter in section 22, as it appears from the record of grants.

The day book before referred to shows, and is written William P. Lea. My opinion is, that is in the handwriting of James A. Lea.

Ques. 13. Please to state in whose handwriting is the original location of entry No. 5446, the land in dispute.

Answer. I believe that it is in the handwriting of James A. Lea.

The further taking of depositions in this cause is continued until Friday morning, 8 o'clock. JOHN H. PAYNE, *Com'r.*

Friday Morning, 8 o'clock, Sept. 28, 1855.

The further taking of depositions resumed this morning, present the same parties as on yesterday, and also present, Alfred Caldwell, solicitor for respondents. JOHN H. PAYNE, *Com'r.*

Ques. 14. In your answer to my eighth question, you state that the general map of the Ocoee District in the office of the Entry Taker, shows that Wm. Park Lea entered the west half of the N. W. qr. sec. 34, fract'l township 2 north, range 3 east; please to state whether said map does not show that F. W. Lea was the original enterer at one cent of the whole quarter, and that his name has been erased, and that of Wm. Park Lea written over it as Gen. Ent'r, at 1 cent 1 mill, and explain, if you can, why such erasure was made, and all the circumstances connected with such change of names, with the dates when the original entry of the whole quarter was made by F. W. Lea, and when the west half of said quarter was entered by Wm. Park Lea, if at all.

Answer. The map covering that particular quarter, seems to have been erased. The words Lea, letter G and 1 ct is on the east ½, Wm. Park Lea's name upon the west ½; and F. W. Lea, now written on the east, in a contrary direction from the way the first writing was done. I believe the handwriting to be my own; if not, it is William Park Lea. I presume F. W. Lea was originally written upon the quarter. Such mistakes frequently occurred by neglect in marking the name of the enterer at the time he made the entry; and another coming in and entering the same land. When such mistakes occurred and were discovered, the name of the last enterer was erased, and the previous enterers written in its place.

Ques. 15. Please to state whether, at any time previous to the 20th April, 1854, when the property in dispute was purchased by Thos. H. Calloway for the Polk County Copper Company, you had any conversation with either of the respondents in regard to the existence of another and better title to said land than that derived through the deed of Wm. Park Lea to John Davis, dated 18th June 1846, giving the names of such respondents, the dates of such conversations, if any, and what was said in substance.

Answer. During the time John Hambright as Atto. for Wm. Park Lea, was prosecuting the suit against Caldwell, Keith, and Mastin, I had several conversations with as many individuals, but who they were I cannot say. I never had any with Caldwell, Keith, or Mastin; Mr. Calloway and myself had several. When the compromise was about to be made, or about the time it was closed, I told

him, as well as Jack Hambright, that if it was closed upon the terms then spoken of, I would bring forward a better title for the land. I had no allusion then to any particular title, but desired to coerce John Hambright to pay me a proportion of the compromise money as he had agreed, and I believed he had obtained more than the $13,000. I did not get up, and set on foot Bill Lea's claim until after that.

Ques. 16. Please to state, if you can, the circumstances under which one Alfred D. Taylor, named in complainant's original bill, came to the knowledge of the claim of Wm. Pinckney Lea, to the land in dispute.

Answer. He was in the Entry Taker's office making an examination about land known as the Cherokee Mining Company; and in looking over the record, he noticed Wm. P. Lea's name as marked on the record of map or books, and asked if it was Wheat Lea, meaning William Pinckney Lea; I then went on and told him that Bill Lea, meaning William Pinckney Lea, may have entered the land, and he went and purchased one-half of Wheat Lea's, meaning William Pinckney Lea, interest, and made me a deed for ½ of his interest. That deed I have, but it is not recovered.

Ques. 17. Do you now consider yourself as in anywise interested in the result of this suit?

Answer. If Bill Lea gains, I shall try to set up my claim, as I believe I can prove he tried to sell for me the interest in the land I purchased.

Cross-examination.

1 Question by respondents' solicitor. Had you ever thought or heard of William Pinckney Lea's claim to the land in dispute, before the conversation referred to with Dr. Taylor in answer to the 16th question, and did or not the question by Taylor prompt you and Taylor to induce William Pinckney Lea to claim the land now in dispute, and did or not, you and Taylor then hunt up said Lea, and make known to him that there was a chance for him to get the land, and what passed with said Lea on the first interview?

Answer. When in Missouri, hearing of the copper, I thought of who were the enterer up there, and may probably had some memorandums of enterer's name. Bill Lea's name suggested itself to me, but in conversation with Park Lea, he claimed it. I made a trade with him for all his lands in the Ocoee, so as to cover every tract for a small sum, not exceeding $500, entered into no writings; afterwards John M. Lea and John C. Gant, now Judge Gant, was to be my partners. When I called upon Park Lea for the deed, which was prefaced by one or the other, he had received a letter from John Hambright, and would not comply with his sale. It was sugged to me as a fair foundation for a Ducktown law suit; by both being of the same name. Taylor agreed to go and see William Pinckney Lea, and make a purchase; and we were to be equally interested. I

thought we could get a good compromise without much trouble, and make up what I suppose Jack Hambright got over the $13,000. It may be proper for me to say that Jack Hambright, after the compromise, offered me something like $2,500 if I would give a quit claim deed, and I declined for that sum, so to do.

2d by same. On the 15th day of April, 1842, was there or not several clerks in the land office? If so, who were they? And state also whether or not the clerks in the office did or not divide the Ocoee District in ranges, making it the duty of one clerk to take one range, and a second clerk another range, &c., whose duty it was to record the entries upon which there were no conflicts; and if so, who had charge of range five east—the range that contains the land now in dispute?

Answer. There was several clerks in the office on that day. As a large amount of business was done that day, and we anticipated it, and each clerk was assigned such a part of the country. And at night, by so doing, all the entries in the different ranges were assorted, so that nothing was to do but to assort them into townships, &c.

I had a part of the country east of the basis line, and had range 5 east, and the county in which the land in dispute is situated; and on the day-book it is marked by No. and name, in my handwriting.

3 by same. Did you, in discharge of your duty as clerk in said office, acceding to the above arrangement, record entry No. 5446 in day book B or C, and as recorded is the same correctly done?

Answer. I made the record in day-book C, as now marked upon the back; it was done as was usual, and was sufficiently correct to answer the purpose for which it was intended; it being entry 5446.

4th by same. Was Book B or C, which are sometimes called day-books, in either kept or used in the Entry Taker's office by your father, as books necessary for the office, and as office books? and if so, is entry 5446 for the land in dispute, and does it stand on said book marked as originally put down, without change or blot, and in whose handwriting, and is the entry in such book made, and in whose name does it stand?

Answer. Book C was kept in the Entry Taker's office. The Entry Taker kept it, the book, for his own convenience, so that he could keep his cash account. I am not aware, nor do I know, that it was an office book. He was not required by law to keep such. I made the entry of No. 5446, and William Park Lea, in Book C, and the land described in the location for that number is the land in dispute, and it stands on said book as first written by me, without change or blot. The book was kept in connection with the other books of the office; that is, the location corresponding to entry in day-book C being 5446, was recorded in the records of entry to No. 5446.

5th by same. Did William Pinckney Lea, the complainant in this suit, make any entry whatever, in said office, on the 5th day of April, 1842?

Answer. I cannot say whether he did or not; I do not recollect of seeing him.

6th by same. Did William Pinckney Lea apply to you about the year 1844 to get authority to herd his cattle on your lands in the mountains? and if so, did you give him authority in writing, and at this time did he claim that he had land in the mountains or not? Please state the substance of what passed between you at the time.

Answer. William Pinckney Lea did make application to graze his cattle on my land in the mountains, and it may have been 1844; it was after they had been run out by some persons. I am not sure I gave him a written permission, but rather suppose I did, for persons residing up near where he had them was opposed to any person grazing cattle up there. It was in 1843 or 1844. To the best of my recollection, I heard nothing, then, of his claim to the land now in suit, have no distinct recollection of all that took place, and might not have recollected the circumstance of giving permission, except a bear skin had been put on one, and scared the rest out, as was reported.

Re-examination.

1st question by complainant. In your answer to the second interrogatory on your cross-examination, you state that the Ocoee District was parcelled out to the different clerks in the office; please to state whether it was contrary to the rules of the office for other clerks to accept locations tendered by enterers in the District allotted to one who might happen to be absent.

Answer. The plan of assigning certain ranges to certain clerks was only done when a large amount of business had to be transacted, for instance, when the price of land by law was reduced. It was no law of the office, but a custom; and it may be that some took entries outside of the county allotted to them. I do not recollect of doing so. When a party approached the counter, if his land was not included in the county assigned the clerk, the enterer passed it and his money to the proper one, which was pointed out.

2d Int. by same. In answer to 3d cross-interrogatory, you say that you recorded the entry No. 5446, covering the land in dispute, "as was usual, and was sufficiently correct to answer the purpose for which it was intended;" please to state whether the name of the enterer is written on the record in the same manner as in the original location, and state the difference, if any.

Answer. The original location is written William P. Lea. The entry in day book was made, as before stated, by me, and was written William Park Lea in Day Book C.

3d Int. by same. Please to state whether you have any recollection of having received a location from anybody for the land in dispute on the 5th April, 1842.

Answer. I do not.

4th Int. by same. How do you explain the discrepancy between

the original location and the entry which you say you made from it in Day Book C?

Answer. I cannot give any satisfactory reason for not copying in the Day Book as the location was written, except I supposed the entry was made by William Park Lea, as I knew he was making entries on that day.

5th Int. by same. In recording entries made by William Park Lea, was it usual with you to write his name in full?

Answer. I do not know that I ever recorded entries for him in Record of Entries. I have done so on day book. He was generally called Park, and this may be the reason I wrote his name in full instead of William P. Lea, as written in location.

6th Int. by same. Please to state whether you had free access to the United office of the Entry Taker and Register of the Ocoee District during the year 1854; whether you did or did not attend chiefly to the business of the office for the incumbent during that and the current year.

Answer. Since my return to Tennessee, in 1853, up to present time, I have acted as deputy for James S. Bradford, Entry Taker and Register of the Ocoee District, and had free access to said office.

7th Int. by same. State whether the original location and the certified copy of entry No. 6115 are now in the office of the register, and if not, please to state, as nearly as you can, when and how they were removed therefrom.

Answer. I have seen the certified copy for the land covered by Entry No. 6115; the location I do not recollect ever having seen. I have examined for it, but never found it. In the Record of Entries the name is erased which I suppose was William P. Lea, from that name being marked to that number in the Day Book. I do not know where they are; the certified copy I have seen within a year, and it may now be in the office; I showed it to some parties and do not recollect whether I brought it back or not, but presume I did. It was shown at Mag Rowles' office, who was then acting for the respondents.

8th Int. by same. Have you any recollection whether the certified copy of entry 6115 was in the office when you and A. M. Lea, agent for complainant, examined the records and papers relating to this case in Entry Taker's office in the month of November, 1854?

Answer. I cannot say. It is rather my impression Bradford had laid it away. He has told me that it was his impression, from the fact that he was so specially charged to take care of the papers, that he may have stuck them away for preservation and forgotten where. He has told me this in regard to certified copy No. 5446.

9th Int. by same. Please to state at what date the certified copy of entry No. 5446 was last known by you to be in the office.

Answer. I do not recollect of ever seeing it.

10th Int. by same. Please to state whether you were in the Entry

Taker's office of the Ocoee District with A. M. Lea, agent of complainant, in the month of November, 1854, and whether you and said agent then searched for the certified copy of entry No. 5446, and whether you found such paper.

Answer. I have been in said office with the said Albert Lea; we have examined for said paper, and never found it.

11th Int. by same. Please to state whether the said agent made particular inquiries for the certified copy of entry No. 5446, and what explanation you gave him in regard to its absence from the office.

Answer. He did make inquiry as well as search. I informed Am. M. Lea that Mr. Bradford at one time had reason to see said location, and that he inquired of Mr. Calloway, who said he last saw it in the hands of U. T. Kuth. I made either before or after a similar inquiry of Mr. Calloway, and he gave me the same answer.

12th Int. by same. Please to state whether you were the reputed owner of considerable tracts or parcels of land situated among the mountains on the north side of the Hiwassee River in the years 1843 and 1844.

Answer. I was the owner of lands at the and about the place mentioned.

Re-examination by Respondents' Sol.

1 Question. On the map of the district James Davis's name appears to be written on the northwest quarter of section 22, fractional township 4 south, range 5 east, it being the land covered by entry No. 6115, as made by W. Park Lea, will you state, if you can, you recollection of how Davis's name appears to be written over W. Park Lea?

Answer. I have no recollection how it came there. It has evidently been written after an erasure, and I believe it is my handwriting. Davis's entry was not made until May 6th, 1842, Wm. P. Lea on the 5 of April, 1842.

Second re-examination.

1st Int. by complainant. Please to state whether the map now before you (marked Exhibit A) is a correct copy of the 4th fractional township, range 5 east of the general map of the Ocoee District required by law to be kept in the office of the Entry Taker, and also state how it appears to have been copied.

Answer. It is a correct copy, and was made by putting or covering the fractional township with a sheet of tracing paper, and then transcribing on it from the map beneath.

Further this deponent sayeth not. FRANCIS W. LEA.

(For map, see original, page 617.)

Deposition of Rebecca Lea. Sept., 1855.

Rebecca Lea, aged about 42 years, a witness summoned on behalf

of the complainant, was sworn by the commissioner and examined by A. M. Lea, agent for the complainant.

Question by complainant. If at any time before the 20th day of April, 1854, when the land in dispute was purchased by Thomas H. Calloway for the Polk County Copper Company, you had any conversation or wrote anything to said Calloway in regard to the ownership of said land, please to state what you so said or wrote, from whom you obtained the information so communicated to said Calloway, for what purpose, and at whose instance such information was so given to said Calloway by you.

Answer. I understood from my husband, Francis W. Lea, that he believed there was a flaw in the title to the best of my knowledge, but I did not know until about the time that William Pinckney Lea had any claim, until about the time that he brought that suit, or just before it was brought. I made the communication in writing of my own accord.

My husband, Francis W. Lea, was not at home at that time. The communication was made to my brother, Thomas H. Calloway. My object in making the communication was, that if there was a flaw in the title that I wanted my brother to know it.

Cross-examination.

Question 1. By respondents' solicitor. Are you acquainted with the land which is the subject of controversy in this suit?

Answer. No, sir; I cannot say that I am.

2 Question by same. In your answer to the question of complainant's agent, you speak of hearing of a flaw in the title, did you know to what title or what lands said flaw applied?

Answer. Well, I must have thought it was this, I suppose.

And further this deponent saith not.

REBECCA C. LEA.

Friday, Sept. 28, 1855.

By consent of parties, the deposition of Rebecca C. Lea is reopened, Thomas H. Calloway, one of the parties, being absent at the time said deposition was taken. JOHN H. PAYNE, *Com.*

Question by respondents' solicitor. In your examination in chief you answer that you had heard of a flaw in the title to certain lands which you afterwards on cross-examination stated you supposed referred to the title of the land now in dispute; you will now please say to whom you referred as setting up a claim to said land, which would constitute a flaw, and about which you wrote to Thomas H. Calloway.

Answer. I thought that Francis W. Lea had the claim, that the claim was in him at the time that I wrote the note or letter.

And further this deponent saith not.

REBECCA C. LEA.

Deposition of James M. Johnston. Sept., 1855.

James M. Johnston, a witness summoned on behalf of the complainant, aged about 42 years, being next sworn, deposes as follows:—

Question 1st by complainant. Were you at any time appointed register, and also Entry Taker of the Ocoee District, and had you at any time possession of the books and papers of the two offices? if aye, state from whom you received them, when you received them, and how long they had been in the keeping of the previous possession, as nearly as you can tell.

Answer. I was appointed Entry Taker and Register of the Ocoee District, and had the books of the office in my possession, and received them from Thomas H. Calloway. I received them in one of the rooms of the court house. I rec'd them in the fall or winter of 1851. I saw him in the office frequently before I rec'd the book, but do not know how long he had them.

Cross-examination.

1 Question by respondents' solicitor. You will please state if the book and papers of the office were delivered by Mr. Calloway to you before or after your appointment as Register and Entry Taker as above stated; and if before, how long before, and what reason did Calloway assign for putting the books and papers of the office in your possession; did he or not say it was to keep them from getting lost or destroyed, and did he at the same time say he would have you appointed, if he could, to the office?

Answer. The book and papers of the office were delivered to me before I was appointed register. They were delivered to me some time before I was appointed register. The reason Mr. Calloway assigned was that he was afraid that the books would get destroyed in the court house; it was through Mr. Calloway I rec'd my appointment. Mr. Calloway stated at the time I took the books he would try and have me appointed register.

2d by same. You will please state if the books and papers of the office were in such condition at the court house as to be liable to get lost, destroyed, or damaged, and was it not important that some one have charge of them, to preserve them properly? Was there any Register or Entry Taker to take charge of them at the time they were delivered to you?

Ans. The room of the Court House that the books were kept in was not safe at that time for valuable books and papers, unless some person had have occupied the room, and I removed them to my store-room. I believe there was no register at the time, unless Mr. Calloway was, and he stated to me he could not attend to the office.

And further this deponent saith not.

JAMES M. JOHNSTON.

Depo. of Polly Witt, for Compl't. *Jan'y*, 1856.

Polly Witt, aged about 45 years, a witness for complainant, sworn as aforesaid, deposeth as follows:—

1st Int. by complainant's agent. If you know anything about complainant and J. C. Maples having cattle in the range near where you live, on Towey's Creek, please to state who had charge of them, and when they were grazed there.

Ans. I understood that Larkin Rutherford kept cattle there for them, but of my own certain knowledge I don't know. I do not know what year it was; it was while he lived there.

2d Int. by same. Did you express any dissatisfaction with Rutherford for keeping cattle in the range so near where you lived?

Ans. Mr. Mastin's cattle, and Blackwell's, got in my field, and I went to Rutherford and told him I did not want him to keep the cattle there, and he told me that he did not keep Mastin's and Blackwell's cattle, that he only kept Lea's and Maples' cattle. He salted them in the valley where I now live. I told him that I did not want him to salt them there on my land, that they were destroying my truck, and damaging me, and I did not want him to keep them there.

3d Int. by same. Were you land agent for Francis W. Lea about the time Rutherford kept cattle for Lea and Maples, near your lands?

Ans. No, sir, it was after that a considerable time before I had anything to do with Lea as his agent. It was either in 1850 or 1851. I have been dealing with him a little off and on ever since.

4th Int. by same. Was the late Thomas W. Mastin in the habit of being frequently at your house when passing about attending to his cattle, and looking up his lands in the mountains?

Ans. He was there some time.

5th Int. by same. Were you well acquainted with the late Thomas W. Mastin, and have you done business for him as his agent?

Ans. I was tolerably well acquainted with him, but I never done any business for Mastin.

6th Int. by same. Was the late Thomas W. Mastin, whilst engaged in operations in Ducktown, in the habit of making your house a stopping place in passing between his home in McMinn County, and the mines?

Ans. I lived off of his way, but while he kept his cattle there the two last years he kept them that was on his way, and he commonly called—the man that salted his cattle lived on the school land.

7th Int. by same. If the late Thomas W. Mastin, shortly after he, Caldwell and Keith had purchased out the lands of John Davis, in Ducktown, embracing the land in dispute in this cause, was at your house, and was speaking of his speculations in Ducktown, please

to state whether he spoke of a plan in the title to any of the lands so purchased from John Davis.

Ans. Mastin never said anything about it at my house. I saw Mastin at Athens, after he had made the purchase, and asked him if Frank Lea had got home from Missouri, and he said he had, and was to meet him that day at Athens, to come on to Ducktown with him, that he wanted him to help to fix something about the Davis land, and that he had got a letter from him stating that he could not come, that it had snowed, and he was forced to go back. I do not recollect whether he said it was something wrong in the title, or to do the writing; it was something about the Davis land.

8th Int. by same. Did Mr. Thomas W. Mastin, when you saw him at Athens, tell you that he had offered Francis W. Lea an interest in part of the land bought by him, Keith and Caldwell, from John Davis, if he, the said F. W. Lea, would do what he, Mastin, was then expecting, the said F. W. Lea to come up to Athens to attend to?

Ans. No, sir. He never had not such talk to me, he just told me barely what I told you.

9th Int. by same. Did you go from Athens, when you speak of having seen Mastin there, to Cleveland to see Francis W. Lea on business?

Ans. No, sir. I came home and then went to Lea's.

10th Int. by same. When was it you went to see F. W. Lea?

Ans. It was in the winter the first time Lea came home from Missouri. It was the first time he came home after he went to Missouri as Indian agent.

11th Int. by same. When you went to see Francis W. Lea, as stated in your last answer, did you have any conversation with him about the business which Thos. W. Mastin had been expecting to see him about at Athens?

Ans. Yes, sir, we talked about it, and I reckon he told me all about it, but I do not recollect now well enough to be qualified about it. He said he was obliged to go on then, and that he was obliged to be at St. Louis, and that he was not a going to come.

12th Int. by same. Are you acquainted with the land in dispute in this cause?

Ans. No, sir. I never saw it till to-day.

13th Int. by same. Did you ever hear the late Thomas W. Mastin speak of a piece or lot of land on which Luther Wallace formerly held an occupant claim?

Ans. No, sir. I never heard Mastin say anything about it. I heard Mr. Wallace say he held an occupant on some of the land in dispute. I first heard Mr. Hannah say something about it, and I think I asked Mr. Wallace about it.

14th Int. by same. If you know how Wm. Park Lea usually signs his name, please to state how his signature is usually written.

Ans. Well, all the papers that I have is signed Wm. Park Lea, as

well as I can recollect. I don't know how he signs his name elsewhere. I have but one bond that has his name written by himself. I have a map on which his name is written in several places William Park Lea. It was written by Frank Lea. I have a little map of a forty acre entry that Park made, with his name written Wm. P. Lea. Frank made both the maps. The little map, containing the forty acres, was given to me by Frank Lea in 1847, so that I could go to Park and buy the land.

15th Int. by same. When was the larger map, of which you speak, given to you by Francis W. Lea?

Ans. I don't recollect; it was just a little while before he went to Missouri.

16th Int. by same. What portion of the Ocoee District was embraced in the larger map given you by F. W. Lea?

Answer. It was just land that lay on the river adjoining the Savannah, lying from where Hughes lives down on each side of the river to the boundary line between the Hiwassee and Ocoee purchases.

17th Int. by same. Does the larger map, given you by F. W. Lea, contain the names of any other Leas beside that of William Park Lea?

Ans. Frank's name is on it, and Caswell Lea's and Park's name, and Barger's and Keith's name is on it; if Wm. P. Lea's name is on it, I don't recollect it.

18th Int. by same. If you have the map just referred to, please to show it, and state how often the name of Park Lea occurs upon it, and how written in each case.

Ans. The name of Park Lea, as appears from the map, is written on it twice; in one case it is written W. Park Lea, and in the other Wm. Park Lea.

19th Int. by same. If you have a bond from Park Lea, dated 27th January, 1849, please to show it, and state how it was signed.

Ans. It is in the body of the bond William Park Lea, and signed Wm. Park Lea at the bottom.

20th Int. by same. How does F. W. Lea, in familiar conversation with you, ordinarily call the complainant?

Ans. I don't recollect that I ever heard him say anything about him but one time, and he called him William P. Lea then.

21st Int. by same. Have you heard Frank Lea call complainant "Bill Lea?"

Ans. I cannot say.

22d Int. by same. Did Francis W. Lea, when you went to see him on his first return from Missouri, say to you that he had examined the records and files in the Entry Taker's office, and that he was satisfied that the land in dispute in this cause was not entered by W. Park Lea but by Bill Lea?

Ans. Well, now I will tell you it was not at the time I went down to see Frank after he first came back from Missouri. After Frank went to Missouri, Park came in, and I went down to see Park to

get him to make a deed to the land for which the bond calls. It was the first time that I was down after Park Lea, and the company that he and Hambright were contending against had a compromise. I asked Frank how Park and they made it, and he told me, but I don't recollect now how much they gave him. He said there was going to be another lawsuit, and I asked him who, and he said Wm. P. Lea, and I asked him if he entered the land, and he said he did.

Respondents, by their sol., except to the last question and answer, because complainant has taken the deposition of Francis W. Lea in his behalf in this cause, and cannot impeach him, and because the statements and declarations of the said Francis W. Lea are incompetent and inadmissible as evidence in this cause.

J. B. COOKE, *Sol.*

23d Int. by same. Did you not say to Albert M. Lea, complainant's agent, the present interrogator, at your house, on or about the 1st day of November last, that when you visited Francis W. Lea, shortly after you met Thomas W. Mastin at Athens, and soon after the return of the said Lea, the first time from Missouri, that the said Francis W. Lea had then, at his own house, said to you that the land in dispute in this cause was certainly entered by Bill Lea (meaning the complainant); but at the same time, he, Francis W. Lea, told you not to say anything about Bill Lea's title until Park should get all he could, and then he would bring out Bill Lea's claim?

Ans. No, sir; I never told you no such a thing. I told you that I did not know the time, but since I understood that you were going to have me summoned, I recollect the time.

24th Int. by same. Did you not, at your house, about the 1st day of November last, tell the present interrogator that the late Thomas W. Mastin, shortly after he, Keith, and Caldwell had purchased the land in dispute from John Davis, had said to you that there was a flaw in their title to the Copper Hill property, that on which Luther Wallace had an occupancy, and that he wanted to see Frank Lea to get him to fix up the title?

Ans. I told you all I know about that in this deposition.

25th Int. by same. For what purpose did J. S. Bradford go to Missouri, shortly after Keith, Mastin and Caldwell bought the land in dispute from John Davis?

Ans. I do not know of my own knowledge; Frank Lea's wife told me that he went after Doc. Lea's sister.

Cross-examination.

Question by Resp'ts' sol. Please state if you saw William Pinckney Lea, the compl't, out in the mountains a short time after the land in the Ocoee District fell to one cent per acre; and if so, state how long it was afterwards, and what he was doing.

Ans. I don't recollect that I did. If I did I have forgotten it.

If I ever saw him till after this suit was commenced, I don't recollect it.

2d by same. Did Francis W. Lea ever explain to you the reason why he told you that Wm. P. Lea, the compl't, had entered the land in dispute?

Ans. Frank was up a week or two ago after they had sent a notice from Benton. I told him about them summoning me, and that I did not go, that I did not know anything only what he told me about Wm. P. Lea entering the land, and the river was up, and Bonaparte and his wife were going, and I could not go no how. He said that the Park Lea party, or I understood that it was that sidé that had agreed to give him a part in it, and that they had cut him out, and that he intended to give them some trouble about it, and that he had told them that in his deposition at Cleveland I told him that I would not go, that if he had acknowledged that, that I did not know anything that would do them any good, and he said for me to go and tell it. And further this deponent saith not. POLLY WITT.

Sept., 1856.

Deposition of M. W. Legg, witness for compl't, aged about 46 years, being sworn on the Holy Evangelists of Almighty God, deposes and says as follows:—

1st Interrogatory by A. M. Lea, agent of complainant. Please to state whether you are acquainted with the handwriting of Francis W. Lea.

Answer. I have seen the handwriting of Francis W. Lea frequently.

2d Int. by same. Look at the paper now handed you, marked exhibits No. 1 to this your deposition, and state in whose handwriting you believe the same to be.

Answer. I believe the same to be in the handwriting of Francis W. Lea.

3d Int. by same. Please to look at the papers marked exhibit No. 2 to this your deposition, and state in whose handwriting you believe the same to be.

Answer. I believe from their appearance that it is the handwriting of F. W. Lea.

4th Int. by same. Please to state whether you are acquainted with the handwriting of Wm. Park Lea.

Answer. I cannot say that I am.

And further this deponent saith not. M. W. LEGG.

Daniel C. Kenner, aged about 40 years, next being duly sworn, deposes and says as follows:—

1st Interrogatory by complainant's agent. Please to state whether you are acquainted with the handwriting of Francis W. Lea.

Answer. I am.

2d Int. by same. Please to look at the papers now shown you, marked exhibits No. 1 and No. 2 to the deposition of M. W. Legg, and state in whose handwriting you believe them to be.

Answer. From my knowledge of Mr. F. W. Lea's handwriting, I think the exhibits referred to are in his handwriting.

Int. 3d by same. Are you acquainted with the handwriting of William Park Lea?

Answer. I have seen some of his writing, and I am of the opinion that his handwriting is very nearly like that of Mr. F. W. Lea's, and his father's; I do not know his well enough, however, to discriminate it from the others, as they all *w*right a hand very much alike.

4th Int. by same. Are you acquainted with the handwriting of Euclid Waterhouse, one of the respondents in this cause?

Answer. I have seen some of his writing.

5th Int. by same. Please to state whether there is any similarity in the handwriting of Euclid Waterhouse and Francis W. Lea and William Park Lea.

Answer. From my recollection of Mr. E. Waterhouse's handwriting, I think he writes a smoother hand, and perhaps on comparison it might resemble the handwriting above referred to, but I am not able to say how much.

6th Int. by same. Please to look at the paper now shown you, purporting to be a deed from Wm. P. Lea to John Davis, and marked exhibit O to the deposition of John C. Gant, proven before Jno. H. Payne, August 28, 1855, and state whether you could, apart from the signature, tell in whose handwriting is the body of said paper.

Answer. On examining the exhibit alluded to, I think that it is in the handwriting of Wm. P. Lea, I mean Wm. Park Lea.

7th Int. by same. Please to state whether the handwriting of the paper described in the last interrogatory does or does not resemble the handwriting of Euclid Waterhouse.

Answer. I think that the paper alluded to is in the handwriting of Mr. Wm. Park Lea. Mr. E. Waterhouse writes a smooth hand, but I do not think it is his handwriting. It may resemble his handwriting to some *to some* extent, but how far I am not able to say.

8th Int. by same. Please to state how long you have resided in Cleveland, and what is your occupation.

Answer. I have resided in Cleveland about thirteen years; my occupation is a merchant.

9th Int. by same. Please to state whether Euclid Waterhouse and Thos. H. Calloway, have or have not resided in Cleveland for several years past, and whether they are commonly understood to be intimately connected in their business operations.

Answer. Mr. Thomas H. Calloway has lived in Cleveland for several years; Mr. E. Waterhouse was a citizen of this place about the settling of the town; how long he remained here I do not know; he returned to Cleveland some two years ago in the fall; I have understood that Mr. T. H. Calloway and him are engaged in business together for the last two or three years.

Cross-examination.

1 Question. The deed of William P. Lea to John Davis, marked Exhibit O, and penned by John C. Gant; you have been interrogated and answered as to whose handwriting the body of said instrument is in. In whose handwriting is the signature William P. Lea?

Answer. I believe it to be the signature of Wm. Park Lea.

And further this deponent saith not. D. C. KENNER.

Exhibit No. 1 proved before me by the deposition of M. W. Legg, on the 10th day of Sept., 1856. J. H. PAYNE, *Com.*

July 5, 1854.

Will. P. Lea, Esq.

D'r Sir: Dr. Taylor is here. You know his mission; would be glad to see you. Would suggest that you had better arrange to or to give Bradford, Calloway, &c., one-fourth, or some interest.

At all events do not dispose of your interest on no terms. Calloway owns an interest of $\frac{1}{10}$, now the same would satisfy him. Do not offer it to him or Bradford, or any one until I see you. Do not sell. Your, FRANK LEA.

"Exhibit No. 2 proved by the deposition of M. W. Legg, before me on the 10th of Sept., 1856. J. H. PAYNE, *Com.*"

July 21, 1854.

Dear Sir: Yours was received, in reply, permit me to say, that in my opinion you would do far better to go and prosecute your suit as matters now stand. To now sue Taylor will produce a rupture that cannot do any good. The matter has now been delayed too long, and suit should be instituted if you desire to make anything. You are losing by far more time than you should. When the time is passed you will see it. You had better give some person I could name an interest of $\frac{1}{4}$ to aid you—not secret aid, for you need none of that kind, but men who will stand to you.

Above, I say, "I could name," I mean any set of men of means and energy, and all of you can then make money.

Yours, FRANK.

Now is your time to act, and you should do so in haste.

Facts in regard to Entry No. 5744.

Entry made to William P. Lea, April 5, 1842. Location in his name, also the certified copy. Grant was issued in name of William P. Lea, and so sent to Nashville and recorded. But the record of grant being in Book J, has been interlined to William Park Lea. The two William P. Leas, in making entries distinguished their respective locations, one by simply making the P., and the other by writing Park. The Record Book J., above referred to, was altered by J. C. Tipton without consent of parties, both were not present.

Interrogatories for John M. Lea, Davidson Co., Tenn.

WM. PINCKNEY LEA
vs.
POLK COUNTY COPPER COMPANY, THOS. H. CALLOWAY, and others.

IN THE CIRCUIT COURT OF THE UNITED STATES,
for the District of East Tennessee, at Knoxville.

Interrogatories to be propounded to John M. Lea, of the County of Davidson, State of Tennessee, on the part of complainant in this case.

Interrogatory 1st. State your relationship to the late Luke Lea, formerly entry taker of the Ocoee District; and whether you were occupied or employed or acted as clerk in his office; and, if aye, at what time, and what other persons were employed or acted as clerks in said office, from the time it was first opened in 1838 down to the time when the office was resigned by Luke Lea, where said persons now reside, or, if not living, when they may have died, and giving the ages of any of the said Luke Lea who may have acted as clerks in said office, about the 5th day of April, 1842, and especially that of William Park Lea.

Interrogatory 2d. State what books were used by said entry taker as necessary and proper to his office; and especially whether he kept a memorandum book of entries in numerical order, showing the number, date, size in acres, price per acre, and amount of each entry with the name of the enterer; and if aye, state for what purpose such book was so kept, particularly setting forth your knowledge of its design in reference to settlements to be made by the entry taker with the superintendent of public schools, and whether it was considered by the entry taker as one of the books legally required in his office.

Interrogatory 3d. Were you in Cleveland, Tennessee, in the month of April, 1854, about the time Thomas H. Calloway, Euclid Waterhouse and others, bought of Alexander H. Keith, John Caldwell, and the heirs of Thomas W. Mastin, the tracts or parcels of land covered by entries Nos. 5446 and 6115, embracing what is now known as "Copper Hill," and which land is the subject of this suit? If aye, state whether you heard any person about that time, but before the said purchase was made, inform either of the parties to said purchase (naming them) that said Keith, Caldwell and Mastins were not the true owners of the said lands, or words to that effect; and especially state whether you were at the house of Thomas H. Calloway, one of the said purchasers, about that time, in company with Francis W. Lea, when the proposed purchase was a subject of conversation, during which the said Francis told the said Calloway that they (the said Calloway and his co-partners in the purchase) "had not yet found the true owner for that land," meaning the land in dispute in this case, or words to that effect; and if aye, state whether you then con-

sidered the remark as intended to put the said Calloway on his guard as to the title of said land; and if a remark to this effect was not made at the place and time above named, state whether a remark to the like effect was made by the said Francis W. Lea to the said Calloway at any other time and place in your presence. Also particularly state whether you and Francis W. Lea, about this time, were riding together from Cleveland to Ducktown, and met Euclid Waterhouse on the road; and, if aye, what was said by the said Francis W. Lea to the said Waterhouse in relation to the title of said Keith, Caldwell and Mastins to said land, or in regard to its ownership, and specially state whether what was said at the time was understood by you as designed to put the said Waterhouse on his guard as to one or more other claimants to said land, whose titles he, the said Francis W. Lea, considered better than that of the parties then proposing to sell. And if no such conversation took place at either of the times and places above named, state whether such conversations took place at any other time, and give the circumstances.

Interrogatory 4th. Did you hear defendant Calloway at any time before the purchase of the land in dispute by himself and others, speak of the claim of any other person to the land as represented by Francis W. Lea? and if aye, state whether you understood the said Calloway to say that the said Francis claimed the land himself, or for another.

Interrogatory 5th. What is your relationship to the parties in this cause?

Interrogatory 6th. When and from whom did you first hear of the claim of the complainant to the land in dispute?

Interrogatory 7th. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? if yea, set forth the same fully and as large in your answer. NELSON, MEIGS and SNEED, *Sol'rs.*

Deposition of J. M. Lea. Oct., 1855.

STATE OF TENNESSEE,
Davidson County.

In pursuance of the within commission, I have caused to come before me, at my office in Nashville, the 3d of Oct., 1855, John M. Lea, a witness in the cause, specified *i. e.* commission, who, after being duly sworn, deposeth and saith as follows to the interrogatories filed, as now inclosed herewith:—

In answer to the first interrogatory, I state that I am a son of the late Luke Lea, entry taker of the Ocoee District. I cannot say I was ever regularly employed as a clerk in said office, but I assisted from time to time, when there was a press of business, from the opening of the office in November, 1838, until some time in the spring or summer of 1840. I went to Athens about the last of De-

cember, 1838, to engage in the study of the law, but often returned to Cleveland, when my services were needed, to help in the business of the office. The late Spencer Jarnagin was in the office and about Cleveland almost the entire winter of 1838–39, and assisted in receiving entries, comparing locations, &c. The Hon. Geo. W. Rowles, of Cleveland, assisted for about two weeks in the winter of 1839, when the office was opened for the reception of entries at 72 per acre. The entry of land was suspended by an act of Assembly for about one year from April, 1840. I left East Tennessee in the autumn of 1840, and did not visit Cleveland until about the middle of July, 1842, and then only for four or five days. There was no business doing in the way of entering land, and I have no recollection at all of being in the land office. Before I left East Tennessee my father, my brother Armstrong, and Frank and myself chiefly did the business of the office. Frank, I think, first began to be employed about the office in the summer of 1839. Park did not come into the office as a clerk whilst I lived there. From the autumn of 1840 I have no personal knowledge as to who served as clerk in the office, but presume that my father, my brother Armstrong, Frank and Park chiefly did the business of the office. Others doubtless occasionally assisted, but I do not know who they were. My brother Armstrong, who was born on the 26th day of February, 1817, died in Mexico in the summer of 1848; my brother Frank, who was born on the 16th day of January, 1821, resides at Cleveland, Tenn; and my brother Park, who was born on the 16th day of October, 1825, resides at Westport, Missouri. My father and Spencer Jarnagin both died in 1852, the former at Westport, Missouri, the latter in Memphis, Tenn.

In answer to the second interrogatory, I state that the books used by the entry taker, and from the fact of use, considered necessary and proper, were the map or rather Atlas of the various townships and fractional townships furnished him by the Surveyor-General of the Ocoee District, the book of entries, in which were copied the locations, and the memorandum book described in the interrogatory. The question was never a subject of discussion whether said memorandum book was or was not a book legally required to be kept, nor did I ever hear my father express his opinion on the point. The entry taker was required to keep an account of the number of acres and the price of the lands entered in his office, and he was also required to see that the entries were made numerically as the locations were filed in the office, and these requirements, or the manifest convenience of the thing, if there were no requirements, occasioned, I suppose, the keeping of such a book. I will state, as well as I can recollect after the lapse of sixteen years, the uses and purposes of the book, and those who are charged with the duty may draw such inferences as they deem just and proper. The book was particularly useful in showing at a glance the amount of money which should be in the office, and in making reports to the Superintendent of Public

Instruction; the book was regarded as the standard, and the money in the safe was always required to correspond with the price and number of acres entered as set forth in the book. No other account of cash was kept, nor need there have been. Said book was also used for keeping the accurate numbering of locations as they were received. For instance, an occupant entered presented his locations accompanied with the money, the name of the enterer was written and the price at which entered on the quarter section of the map described in the location, the money received, receipt given, and then this book was referred to, to find out what number should be placed on the location. The location was then filed away to be copied in the book of entries. Now, it would have been possible, instead of appealing to the memorandum book to ascertain what number should be placed on the location, to go to the former locations which were or should have been carefully filed away, looked them over, and find out the proper number to be placed on said last location. Such constant references and examination of locations filed away would have proved very inconvenient.

Had any one come to the office whilst I was engaged there, and placing his finger on any quarter section marked as entered, the price per acre, and by whom, and asked me (and I am sure such things have been asked of and done by me more than a dozen times) *where that quarter section was entered*, I should have gone to said book to ascertain the information, and that is the only place I could have ascertained it without reading over and comparing every location entered at same price and filed in the office or transcribed in the book of entries. Said book was useful as a historical account of the business of the office, and was, of course, intended to represent truly the facts and things about which it purports to speak. In order fully to express my idea of the book, I will add that if, in making any examination, I had found the number, date, &c. of a location *correct*, but a name *different* from that in the locations inserted opposite, I should certainly have made the correction, but I might have said, and as I think truly, by way of an apology for negligence, it makes no great difference, the cash is all right, and the location would give the land to the proper owner. I do not know that I am able to make any further explanation concerning said book.

In answer to the third interrogatory, I state that I was at Cleveland in April, 1854, solely and exclusively on my own business, and dates connected with my own business transactions enable me to say that I reached Cleveland about noon on the 15th of April, remained there and in the vicinity till the 18th, when I started for Ducktown; came back to Cleveland on the 22d inst., and on the next day left for home. On my way to Cleveland, I was informed that Calloway and Waterhouse had made a large purchase of copper lands from Keith and Co., and, after I reached Cleveland, I understood that the land for which my brother Park had sued Keith and Co. was included in the purchase. The proposed trade referred to in the

interrogatory must certainly have been made before I reached Cleveland. Deeds may or may not have passed: I do not know; but the trade was generally spoken of as a thing done and concluded. Be that as it may, whether the proposed trade mentioned in the interrogatory was made before I went to Cleveland, whilst I was at or after I left there, I am very sure and positive that neither Francis W. Lea, nor any other person or persons, ever did, in my presence, or within my hearing, either at Calloway's house or on the road to Ducktown, or elsewhere, tell said Calloway and Waterhouse, or the one or other of them, that Keith, Caldwell, and Mastins were not the owners of said land, or that they had not yet found the owner for the land, or any words or language to that effect.

If any such thing had taken place, or any such conversations ever been held, I should certainly have recollected it. I was never at the house of Tho. H. Calloway, to my knowledge, when the proposed trade of Calloway, and Keith, and others, was ever alluded to by Francis W. Lea in said Calloway's presence. I never heard Waterhouse himself either speak of, nor did I ever hear him spoken to, by any other person or persons, of any interest he possesses at Ducktown, or any claim that he has now, or ever had, at Ducktown. In fact, upon the whole subject of Calloway's trade with Keith and Co. I am ignorant, and do not know anything even from hearsay.

It may be proper for me to say that, in the 16th or 17th of April, a conference was held at Calloway's house, among Calloway, Francis W. Lea, and Hambright, the attorney of my brother Park, concerning the purchase of Park's claim to the land, as I understood.

Those three gentlemen were engaged together some time talking. I was at the house, but not in the same room, and did not hear anything of the conversation. It may also be proper for me to say that, on my way to Ducktown, in company with my brother Frank, we met Waterhouse, in company with several other gentlemen. I passed the usual salutations; Frank and Waterhouse halted; I rode on; and tho' I was in sight, I was more than a hundred yards distant, waiting for my brother, and I did not hear one word that passed between them. This was on the 20th of April. My brother Frank did not pretend to tell me in full the particulars of his conversation with Waterhouse concerning the settlement of Park's claim by Hambright, but I well recollect the remark (in substance, if not the words) which he said he used to Waterhouse, as I also well recollect what he said he told Calloway concerning the same matter, whilst we were all, a few days before, at his house, the time above stated. The remark was not told to me as a secret; once or twice I may have spoken of it, and I should do so here, if I could with propriety.

In answer to the 4th interrogatory, I state I do not know *where* said purchase was made, nor *when* my brother Park's interest was purchased, or his claim compromised. I do not think Hambright had made a definite arrangement concerning Park's business at the time I left for Ducktown. If I knew anything at all material in

relation to the interrogatory, it is the following circumstance. On the evening of the 22d of April, Calloway received a note from Frank, which he read aloud to me. It was short, and stated, in substance, that Hambright, he supposed, had or would settle Park's claim or suit in a way that he (Frank) could never assent to, and that any course he (Frank) might choose to adopt hereafter concerning the matter would not be dictated through ill will towards him (Calloway), who was not to be blamed for doing the best he could for himself, or language to that effect. Calloway expressed his regret that Frank should be so much dissatisfied; that nothing better could be done, as Park's deed made so much against him; but he did not see how Frank could help it; the land or entry was Park's; he had examined, and asked me if I had ever heard Frank say what course he intended to pursue, or what he intended to do; I replied that I had not, and supposed he was only in an angry mood, and expressed the hope that he and Frank would have no difficulty or disagreement about it. Calloway did not say anything from which I could infer that he supposed Frank or anybody else had a claim or title to the land. I cannot better express my understanding of the matter than by saying that Frank's note expressed a determination to interfere with Hambright's compromise, and Calloway was at a loss to know what he meant, or how he could do it.

In answer to the 5th interrogatory, I say I am the brother-in-law of Calloway, distantly related (I know not how or in what degree) to the complainant, and no kin to any of the other parties.

In answer to the 6th interrogatory, I say that I first heard of complainant's claim in August or September, 1854, and either from complainant or Francis W. Lea. They were both in Nashville within a short time of each other. If Frank first mentioned it, as my impression is he did, he simply spoke of it as a suit or claim for the land, giving no particulars whatever. But complainant, in August or September, 1854, related the *minutiæ* of his case, and in that conversation it was I spoke of what Frank had told me he said to Waterhouse and Calloway at the times and places as set forth in my answer to the 3d interrogatory, and inquired of complainant if Frank had not communicated the facts of the case to him. The whole thing was new to me.

In answer to the 7th interrogatory, I state that I do not know anything that I think is of benefit or advantage to either party. My memory is good, and I have searched it thoroughly since I learned my deposition was to be taken, and the facts before stated by me, if material or competent as evidence, are all that I know about the case.

In answer to the cross-interrogatory of the defendants, I state that I think the same is fully answered in my direct examination.

JOHN M. LEA.

UNITED STATES OF AMERICA,
City of Nashville.

This day, October 3d, 1855, personally appeared John M. Lea, the witness in the foregoing deposition, and whose name is subscribed to the same, in a suit pending in the Circuit Court of the United States for the District of East Tennessee at Knoxville, wherein Wm. Pinckney Lea is complainant, and the Polk County Copper Company and others defendants, before me, James P. Clark, Commissioner, &c., and the said John M. Lea, having been duly sworn, makes oath that the facts and things therein stated are true, to the best knowledge and belief. JOHN M. LEA.

Sworn to and subscribed before me, Oct. 3d, 1855.
J. P. CLARK, *Com.*

Deposition of W. F. Keith, Compl't. Dec'r, 1855.

William F. Keith being next introduced and sworn, aged about 30 years.

1st Interrogatory by complainant's agent. Were you present as counsel at the office of the Entry Taker and Register of the Ocoee District at Cleveland, when your brother, the respondent, A. H. Keith, was engaged in examining the records and files of that office, preparatory to his answer to the original bill of complainant in this cause?

Ans. I was, upon one occasion, present as counsel at the Entry Taker's office in Cleveland, when A. H. Keith and some of the other respondents in this cause were making an examination of the records of the office, preparatory to making their defence; but I was present only a portion of the time.

2d Int. by same. Please to state whether you then and there saw the original location and certified copy of location for entry No. 6115, covering the east half of the N. W. qr. section 22, fr. T. 4 S., R. 5 E. And also the certified copy of location for entry No. 5446, covering the east half of the S. W. qr. sec. 15, fr. T. 4 S., R. 5 E.; if yea, state what name or names appeared on said papers as enterer or enterers of said lands, and state where you left said papers, and where they now are.

Answer. I do not remember that there was any particular inquiry or examination in relation to the entry No. 6115, but there was an investigation made to ascertain the facts in relation to entry No. 5446, which, I understand, covers the land in dispute in this cause; I was engaged during the greater portion of the time devoted to said examination in making out from the books in the office a tabular statement of the entries made in the names of W. P. Lea, Wm. P. Lea, William Park Lea, W. Park Lea, &c.

Some of the other parties present were engaged in hunting for the locations of entries made in the names aforesaid.

Among some of the files, a paper was found by some one present,

purporting to be a location for entry No. 5446, in the name of William P. Lea, or W. P. Lea, I am not certain which. Said paper was examined by the persons present, and replaced in the file. Whether it was the original location, or a copy of it, or whether it was genuine or not, I have no means of knowing.

I could give the conversation that passed between the defendants and their counsel in relation to said paper, were it proper to do so. I am not sure that I ever had said paper in my hands. I examined it, and may have passed it from one gentleman to another; the last I saw of it was when it was placed in the file from which it was taken, and the file was placed in its appropriate pigeon hole in the office. From that day I have never seen said paper, nor have I any knowledge where it is at this time, if it is not in the Entry Taker's office. I have no recollection of ever seeing the location or copy of locations for entry No. 6115.

I think in the book kept by the Entry Taker for making copies of locations, we found recorded a copy of location for entry No. 5446. If there was any certified copy of said entry found in the office, I do not remember it. My impression is that no such copy was found. If so, I have no knowledge where it is now; I give it as the best of my recollection, that all we ever found in relation to said entry was the paper above described, purporting to be the location for said entry, and the copy of the same in the book kept for the purpose aforesaid. Said examination took place some time in October, 1854, as well as I now remember, and a few days before the answer of A. H. Keith and others was verified by affidavit.

3d Int. by same. If you drew up the answer of A. H. Keith to complainant's supplemental and amended bill, please to state upon whose information the allegation was therein made, that the location for entry No. 6115 was taken from the land office by Albert M. Lea, the complainant's agent, or was last seen in his possession.

Answer. I drew the answer of A. H. Keith to the supplemental and amended bill filed in this cause. He states that he had been informed that the location for entry No. 6115 or No. 5446 had been taken from the office, by Albert M. Lea, complainant's agent, or was last seen in his possession. The answer is not before me at this time, and I do not remember which location of entry was referred to in said answer. My impression is that it was the location for entry No. 5446 that he stated, or intended to state, was last seen in the possession of said Lea. I do not remember distinctly from whom he said he obtained said information. I think it was from some one who was in Cleveland when Tipton's deposition was taken in this cause; but I am wholly unable to recall to my recollection from whom he said he had obtained the information.

And further this deponent saith not.

WILLIAM F. KEITH.

Deposition on behalf of the Complainant, taken at Cleveland, Tennessee, from the 7th to the 12th January, 1856.

George W. Rowles, aged about 47 years, being first introduced on behalf of complainant, deposes and says:—

1st Interrogatory by complainant's agent. Were you in the Ocoee Bank on the forenoon of Saturday, December 9th, 1854, the morning of the day on which J. C. Tipton's deposition in this cause was commenced to be taken?

Answer. I am not able to specify dates, but I was in said bank while Tipton was here preparatory to taking his deposition, but I am not able to state whether or not it was on the morning of the day on which the taking of said Tipton's deposition was commenced.

2d Int. by same. Do you recollect whether yourself, Mr. Jas. B. Cooke, and A. H. Keith, Thomas H. Calloway, and Euclid Waterhouse, respondents in this cause, together with J. C. Tipton, were in the Ocoee Bank the same morning that Messrs. Keith and Cooke arrived from Athens, preparatory to taking said Tipton's deposition?

Answer. I am well satisfied that Col. Tipton, Euclid Waterhouse, Thomas H. Calloway, and myself, were in the bank either before or after the commencement of the taking of said deposition, but am not able to state whether it was before or after the commencement of the taking of said deposition, whether Mr. Cook and Keith were also present, I do not recollect, but am certain both Cooke and Keith were in the bank during the week in which Tipton's deposition was taken. I do not know the fact to be so, but believe Cook and Keith came by the cars.

3d Int. by same. Do you recollect whether Francis W. Lea brought into the Ocoee Bank at any time some books supposed to belong to the Entry Taker's office at Cleveland, sometimes in the proceedings in this case called Memorandum or Index Books?

In order that I may place myself right, I deem it due to myself, to the relation of client and attorney, to state, if I may know anything material to the case, it has been derived from communications made to me by Messrs. Calloway, Waterhouse, and others of the defendants in this cause, while I occupied the relation of counsel and attorney to them. And as I understand the law and my obligations, this I am not bound to disclose, nor is it my duty, unless my clients assent, and until such assent is given, I demur to answering the question.

The undersigned, Thomas H. Calloway, in proper person, and James B. Cooke, as sol. for resp'ts, hereby waive any and all objections arising from the relation of attorney and clients on part of the witness, and agree that he may answer this question as well as all others that involve that relation.

THOS. H. CALLOWAY,
JAS. B. COOKE, *for Respondents.*

The complainant by his agent does not admit that the foregoing question trenches upon the confidence between solicitor and client, and disclaims all intention of asking such questions.

A. M. LEA, *Agent of Comp't.*

Answer. The Ocoee Bank, as I have been informed, and believe, belongs principally to Messrs. Calloway and Waterhouse. I have been in the habit of consulting with them as an attorney, frequently at the bank, inside of the counter, where no person goes except invited or particular friends, as I believe. I have had much conversation with my clients at the bank on the inside of the counter. I have no recollection of Francis W. Lea bringing any book really belonging to, or supposed to belong to the Entry Taker's office to the bank. He may have done so, but my client has made a communication to me about a Memorandum Book or Index Book belonging, or supposed to belong to the Entry Taker's office; and Francis W. Lea's name was connected with that communication. I supposed the question had reference to, or bore on this, or I should not have demurred to the question. But as complainant disclaims, as he has above, I do not deem it proper, unless required by complainant, to state what that communication was.

4th Int. by same. When J. C. Tipton's deposition was about to be commenced in the Court House at Cleveland, did you see Jas. B. Cooke, Solicitor for Respondents, and A. H. Keith, and T. H. Calloway, leave the Ocoee Bank and go to the Court House for that purpose?

Answer. Mr. Cooke may have been present a portion of the time while Mr. Tipton's deposition was being taken; but if present, he left before the same was completed. I have no recollection of Mr. Cook, Keith, and Calloway, leaving the bank for the purpose of proceeding to take the deposition. They may have done so. We were about a week, or nearly so, at least several days, in taking the deposition, and it is impossible for me to recollect things that may have occurred that made no impression on my mind. What makes me positive that Mr. Cooke was not present, at least during the whole taking of the deposition, is that I attended to the examination of the witness for the defendants, and lost the Athens Court thereby, which Court Mr. Cook attended.

5th Int. by same. If you saw the respondent, Keith, at Cleveland, on the morning in which the taking of J. C. Tipton's deposition was commenced, please to state where you first saw him that day.

Answer. I have an indistinct recollection of starting to go to the Ocoee Bank, and think I met Mr. Keith on the street in Cleveland, near Mr. Tibb's store, but I may have first seen Mr. Keith at my office. I cannot say positively one way or the other.

6th Int. by same. Did you meet J. C. Tipton at the Ocoee Bank a few hours before the taking of his deposition was commenced?

Answer. I did, as I have before stated, see said Tipton at the Ocoee

Bank, but do not recollect whether it was before or after the commencement of the taking of the deposition.

7th Int. by same. At the time the taking of J. C. Tipton's deposition was about to be commenced, did Francis W. Lea show you when in your own office, or in the office of the Circuit Court Clerk, before you had gone into the office of the Register of the Land Office where Tipton's deposition was to be taken, the paper now shown you, purporting to be the original of location No. 5446, covering the land in dispute in this cause?

Answer. The first time that I ever seen the location referred to, as I recollect, was in the land office, that is Entry Taker's office, and this was previous to the preparing of respondents' answer to the original bill. I believe the paper now shown to me to be the same. Francis W. Lea may have shown me the paper alluded to at my office, or in the Circuit Court Clerk's office, but if he did, I am not enabled to recollect it. There were many papers connected with and referred to in the original answer, and nothing connected with them or any other fact enables me to recollect of said Lea bringing to or showing me the paper referred to; he may have done so.

8th Int. by same. Is the paper now shown you by the commissioner, purporting to be the location No. 5446, the paper alluded to and described in the answer of respondents Calloway, Waterhouse, and Congdon, to complainant's original bill, or the "certified copy" of said location?

Answer. From its appearance and general features, I believe it to be the same location.

9th Int. by same. Do you recollect when J. C. Tipton, during the taking of his deposition, was asked how he endorsed the names of grantees on grants when they had double names, that Thomas H. Calloway took from his pocket a number of papers, perhaps a half dozen, having the usual appearance of grants as ordinarily folded and endorsed by the Register of the Ocoee District, and turned them towards you for you to look at?

Answer. I have an indistinct recollection that some such question was asked said Tipton, or something of the kind was said by some one during the progress of Tipton's examination, but I have no recollection of Calloway's exhibiting papers of the kind alluded to for me or the witness to look at.

10th Int. by same. Have you ever seen grant No. 6251 on entry No. 6115, covering a lot adjoining the land in dispute, now known as the Murdoch lot?

Answer. During my connection as attorney with the case under consideration, and also in consequence of my retainer as counsel in causes relating to lands situate in the region of country where I suppose the land covered by said grant to lay, I have seen and examined quite a number of grants, and I may have seen the original

grant now referred to, but do not recollect of having seen the grant in question.

11th Int. by same. Did Thomas H. Calloway, about 3 P. M., Wednesday, 13th December, 1854, in the office of the register of the Ocoee District, where the deposition of J. C. Tipton was being taken, at the time referred to in my 9th interrogatory, hand you a grant which you read and handed back to the said Calloway in the presence of the present interrogator, Thos. A. R. Nelson, and J. C. Tipton being at the same time on the opposite side of the room?

Answer. If he done so I have no recollection of the fact, nor of anything transpiring that led him so to do. There were a good many papers looked into during Mr. Tipton's examination. Such a thing may have happened. The present interrogator, Col. Albert Miller Lea, was there at the taking of said deposition, and Col. Nelson. Mr. Lea was most minute in his examination of papers in the office. I examined several myself, but have no recollection of seeing or reading the grant referred to; but I believe the book in which the grants are recorded was examined, but recollect nothing of the original grant.

Cross-examination by Resp'ts' Sol.

Question 1st. If there were any memorandum books brought into the entry taker and register's office during the time the deposition of Col. J. C. Tipton was being taken, please state by whom said books were brought in and at whose request.

Answer. In the answer of respondents a book of the entry taker's office, or which was said to be such a book, was relied on as showing that the land in dispute was entered by William Park Lea, as evidenced by having his name written in it as the enterer. There was about and before the taking of said deposition some talk that this was not an office book. I understood, and, as I believe, in the presence of Albert Miller Lea in the entry taker's office, that Francis W. Lea, at his request, had brought in a book similar in its entry to the one relied on in the answers, but it did not contain all that was contained in the book alluded to in the answers, as I recollect; and a discussion took place whether it was a copy of the other, or Francis W. Lea's private property. There may have been another book or books brought in by said Francis W. Lea, and I believe there was, and also at Mr. Lea's solicitation, as I understood.

And further deponent saith not.

GEO. W. ROWLES.

James B. Cooke, aged about 35 years, being next introduced, deposes and says:—

1st Interrogatory by complainant's agent. Did you come to Cleveland with A. H. Keith, one of the respondents, on the morning of the 9th December, 1854, the day that the taking of the deposition of J. C. Tipton was commenced?

Answer. I came to Cleveland about that time. I do not remember the precise date. I believe it was the morning of the day upon which the taking of the deposition of Col. J. C. Tipton was commenced, though it may have been the next morning after said deposition was commenced; neither am I certain that A. H. Keith came with me. My recollection about that not distinct. I believe, however, he did.

2d Int. by same. Were you in the Ocoee Bank on the morning that Tipton's deposition was commenced, but before you went to the court-house for that purpose?

Answer. I was in the Ocoee Bank the morning I came down, and before I went to the court-house, and as I have stated above I think it was before Tipton's deposition was commenced.

3d Int. by same. Did you meet at that time, in the Ocoee Bank, the witness Tipton, respondents Calloway, Waterhouse, and Keith, and solicitor Rowles?

Answer. I think I saw resp't, Calloway, Waterhouse, and Judge Rowles in the bank that morning, but do not remember whether respondent Keith, or Col. J. C. Tipton, or either of them, was there or not. I remained in the bank but a few moments and then came out. My recollection is that I went there expecting to find respondent Caldwell, and seeing that he was not in the bank, came away immediately without particularly observing who were present.

4th Int. by same. Do you know whether J. C. Tipton went into the entry taker's office, where his deposition was to be taken, some hours before you came into the office?

Answer. I cannot now remember whether he did or not. The first time I can recollect of seeing Col. Tipton that day was in the entry taker's office; but whether I had seen him before on that day, or how long he had been there when I remember to have first seen him, I am unable to say.

5th Int. by same. At what time of the day did you come to the entry taker's office to commence Tipton's deposition?

Answer. I do not remember at what time I went to the office as there was no occasion that I can think of to impress that fact upon my mind. My recollection is very indistinct in relation to it.

6th Int. by same. Who went with you to the entry taker's office when you went there to commence taking Tipton's deposition?

Answer. I cannot remember that fact either.

7th Int. by same. Did you not enter the entry taker's office at the time named, followed by A. H. Keith, and he followed by Thos. H. Calloway, and Francis W. Lea bringing up the rear?

Answer. As I have stated above, I do not remember with whom I went to the entry taker's office; and whether the gentlemen above named went with me or followed after me, I have no recollection.

8th Int. by same. Who were in the entry taker's office when you entered it?

Answer. I think I saw Thos. A. R. Nelson, Esq., yourself, and

Col. Tipton in the office when I went in; there may have been others in the office at the time, though I cannot now think of any, and in this I may be mistaken, as I have not thought of the matter of who were there at the time I went from that day till now, that I know of.

9th Int. by same. Were or were not yourself and Messrs. Keith and Calloway in an excited state when you entered the office, arising from some occurrence immediately preceding?

Answer. I was not that I have any recollection of, and if Messrs. Keith and Calloway were, I either did not know it or have forgotten it. I cannot remember of any occurrence calculated to excite either of us. I know that both Keith and Calloway were easily excited upon the subject of this litigation, but do not remember of any special occurrence calculated to excite them that day.

10th Int. by same. Did you, on entering the entry taker's office, point to the paper now shown you by the commissioner, purporting to be location 5446, covering the land in dispute, and say, "There, there, that is what *I* meant by the 'certified copy,'" meaning that that was the paper intended to be referred to and described as the certified copy, or certificate of entry, of the land in dispute in the answer of John Caldwell to complainant's original bill, as drawn up by you?

Answer. I believe that some time during that day, it may have been shortly after I went into the office, I did see the paper now shown me, and did say it was the paper referred to by me in drafting respondent, Caldwell's, answer to the original bill filed in this cause, as having been found in the office, but do not think I said it was what I meant by the *certified copy*, nor do I think it was so designated in Mr. Caldwell's answer, drawn by me. My recollection is that said paper is referred to and described in said answer as the *location*, and not as the certified copy of the entry.

11th Int. by same. Did not complainant's agent, A. M. Lea, in answer to the remark made by you in relation to that paper, say in substance as follows: "Why, Mr. Cooke, that is not the certified copy; it is not the copy of anything; it is the original location?"

Answer. I cannot remember distinctly what was said by you upon that subject. My impression is that there were some remarks made by each of us in relation to the paper now before me, and I think we agreed that it was the original location; but whether you made that remark in response to what I had said or not I cannot recollect, nor do I remember the exact language used by you in relation to the paper. I do not think that I ever had the impression on my mind that the paper was the *certified copy*, and hence I cannot conceive that I used expressions in relation to it such as to call forth the response contained in the above question, nor do I remember your having made any such expressions to me further than I have already stated in this answer.

12th Int. by same. After the answer made to you by A. M. Lea, as stated in your last answer, did not A. H. Keith turn round to Mr.

Thos. A. R. Nelson, and pointing to where the name of Wm. Park Lea was written opposite to the No. 5446 in one of the books called memorandum or index books in the proceedings in this case, say: "*That* is what *I* meant by the certified copy in my answer?"

Answer. I have no recollection of having heard the remark indicated by the question or any similar one.

13th Int. by same. Did not Thos. H. Callaway, pointing to the open record of locations, to the record of location 5446, say: "That is what I meant by the certified copy in my answer," or words to that effect?

Answer. I do not remember to have heard Mr. Callaway use any such expression.

14th Int. by same. Did you see and hear A. M. Lea, complainant's agent, read from a copy of Callaway, Waterhouse, and Congdon's answer to complainant's original bill, what was said in that answer about the certified copy of entry No. 5446?

Answer. I believe I saw A. M. Lea have in his hands some time during that day a paper which he said was a copy of some of the answers in this cause, and perhaps of the answers specified in the question, and I think he read to me that portion of the answer referred to in the question, or a part of it.

15th Int. by same. Immediately after A. M. Lea read from the answer of respondents, Callaway, Waterhouse, and Congdon, as stated in your last answer, did not Thos. H. Callaway say emphatically: "I don't care what you read—that is what I meant by the certified copy, any how," pointing, at the same time, to the record of entry, No. 5446, in the open record book before him?

Answer. My recollection is, that some time during the day, A. M. Lea approached me near the door of the hotel at which I was stopping in Cleveland, and stated to me that the certified copy of the entry of the land in dispute was missing from, or could not be found in the office—stating that he had heard that it was left in the possession of either A. H. or W. F. Keith, to which I replied that I had not seen the certificate of entry, and had no knowledge of it. He then replied that it was in the office when respondents had filed their answers. I told him I thought he was mistaken. He then, according to my recollection, drew from his pocket the paper which he said was a copy of the answers of the respondents above referred to and read to me therefrom a portion of the paper in relation to that subject. This is my best impression in relation to the matter, which, however, is not very distinct. If I saw Mr. Lea have said paper, or heard him read from it at any other time, I cannot recollect it. I did not pay much attention to the conversation that passed between compl't's agent, A. M. Lea, and the respondents. He may have read the paper to Mr. Callaway in my presence, and I may have forgotten it—but am totally unable to recall any such conversation to mind if it did occur in my presence. I think the conversation had between A. M. Lea and myself above spoken of lead to

the conversation in relation to the papers shown me, designated as the location, had with A. M. Lea in the office referred to in the former part of this deposition.

16th Int. by same. Did you not hear A. M. Lea say to Thos. H. Callaway, standing near him in the Entry Taker's office, in reply to a remark of Mr. Callaway's about the certified copy said to be missing, words to this effect: "Mr. Callaway, you know that I know that you know too much about this office for you to palm that upon me, sir?"

Answer. I believe there was some rather angry conversation between A. M. Lea and Thos. H. Callaway, but the language used by either, or the precise subject in relation to which it was had I cannot recollect, tho' I have no recollection of hearing such a conversation.

Cross-examination.

1 question. You will please state whether or not it was understood and agreed on by the counsel for respondents, or at least those that were consulted, that George W. Rowles should conduct the examination for respondents. Who did conduct said examination? Did said Rowles reach Athens Court until its close? If not so, why not? Were you in attendance at said court from its commencement? State any fact in your knowledge that may call the facts to your recollection as to his absence and its cause until the court had closed, or was about closed.

Answer. I came to Cleveland at the instance of respondent Caldwell for the purpose of being present at the examination of J. C. Tipton. Upon my arrival here and after the examination of said witness had been commenced, it was ascertained that it could not be concluded on that day, which I believe was Saturday. On the Monday following the Circuit Court at Athens, where I reside, was to convene, which I was compelled to attend, and it was agreed that G. W. Rowles, Esq., should conduct the examination on part of resp'ts. I then paid no further attention to said examination, but returned home for the purpose of attending said court. Judge Rowles did remain for the purpose of attending to said examination, which was protracted, as I understood, until late in the next week. Judge Rowles did not reach Athens until about the time the court was ready to adjourn, which I remember from the fact that there was an important case of a contested will in which he was concerned, which case was held over until all the other business of the court was disposed of, and finally was continued by his clients on account of his absence, at the termination of said court.

Question. Do you recollect of asking one solitary question while you remained, and, during the time you did remain, did you stay when the examination was being conducted?

Answer. I think I staid a short time where the examination was commenced. I do not think I did ask any question, or pay very

strict attention to the examination while I did stay, for the reason that I relied upon G. W. Rowles, Esq. to attend to it.

Question. You will please state whether or not, since the commencement of your cross-examination, the person appearing for the complainant in this cause, Col. Albert Miller Lea, has not stated that George W. Rowles was not present when the alleged conversations, to which you have been examined, were asserted or assumed in the questions to have taken place between you and said Lea, and between Callaway and Lea.

Answer. I understood him so to state a few moments since.

And further this deponent saith not. J. B. COOKE.

William Grant, aged about 64 years, being next introduced and sworn, deposes and says:—

1st interrogatory by complainant's agent. In your former deposition taken in this cause, you stated that John Davis was paid by Keith, Mastin and Caldwell, at Benton, the six thousand dollars due him for the lands bought by them of him in December, 1852, embracing the land in dispute. Can you state positively whether the whole purchase-money was then and there paid?

Answer. I cannot say positively that it was, but my impression is that it was, and that I counted the six thousand dollars, three thousand in gold and three in paper.

2d Int. by same. Do you know whether any money, or other property of any kind, was paid or transferred by A. H. Keith, one of the aforesaid purchasers from John Davis, to Young Davis, son of John Davis, and one of the subscribing witnesses to the paper purporting to be a deed from William P. Lea to John Davis, dated 18th June, 1846, on the day that said Young Davis proved said paper at Cleveland?

Answer. I do not know anything about any such thing.

3d Int. by same. Please to state how long you have resided in and near to Cleveland, Tennessee.

Answer. Twenty years.

4th Int. by same. Were you intimately acquainted with the affairs of the Entry Taker's and Register's offices of the Ocoee District from the time those offices were established?

Answer. I was tolerably well acquainted with the affairs of said offices.

5th Int. by same. If you entered lands in the Ocoee District at one cent per acre, please to state about how much and when.

Answer. I must have entered some 5 or 6000 acres at one cent per acre, and in 1842, as I now recollect.

6th Int. by same. At the time you made your entries at one cent per acre, did you take separate receipts for the money paid on each entry?

Answer. I took receipts in part, and part I did not.

7th Int. by same. Have you paid taxes on all the lands you entered at one cent per acre, and which you yet hold?

Answer. I have not quite all. There was several years that I paid no tax at all on it, but for the last few years I have paid tax on the most of it.

8th Int. by same. If, to your knowledge, any of the respondents entered lands in the Ocoee District at one cent per acre, state which of them, and whether they have paid taxes on such lands from the time of entry.

Answer. Thomas H. Callaway and Euclid Waterhouse entered lands at one cent per acre, but whether any of the other respondents did or not I don't know; and I do not know whether said Calloway and Waterhouse have paid taxes on said land or not.

9th Int. by same. State any circumstances you may know of persons, aiming to enter certain lands in the Ocoee District, having, through ignorance or mistake, entered others.

Answer. One instance I know of which occurred with F. A. Kincannon, who lived near this place. He aimed to enter the place on which he lived some mile and a half from Cleveland, at $5 per acre, and entered lands some six miles from town. He made two mistakes. One time he entered lands about southeast from this place, about 6 miles distant from town; and the next time he entered lands something like northwest from this place, and about the same distance from town. Both times he entered out of the township in which he aimed to enter. He finally entered the lands that he first intended to enter, at two dollars per acre.

10th Int. by same. Was it not difficult, for a person unacquainted with the land office, to identify on the map or plan kept in the Entry Taker's office, any piece of land which he might wish to enter?

Answer. It was.

11th Int. by same. Did you enter any lands in Ducktown at 1 cent per acre?

Answer. I did.

12th Int. by same. Had you ever visited Ducktown before you entered lands there?

Answer. I had visited Ducktown one time before.

13th Int. by same. When you entered lands in Ducktown, had you been asked how many miles any particular lot was from Little Frog Mountain, could you have answered the question?

Answer. I could not.

14th Int. by same. Do you know whether many persons living in the flat country below the mountains entered lands in or above the mountains for grazing purposes?

Answer. I know there were some.

15th Int. by same. Would you have considered your entries in Ducktown as giving you a right, according to ordinary usage, to graze your cattle in the general range of that region without molestation by the actual settlers?

Answer. I would.

16th Int. by same. Over what extent of open woods will a herd of one to two hundred head of cattle roam in the range?

Answer. That would depend a good deal upon the quantity of grass. If the grass was not very plenty, they would roam, I would think, over a space of some six or eight miles.

17th Int. by same. When you entered lands in Ducktown, at one cent per acre, were the mountains west of Ducktown then remaining generally unentered?

Answer. They were.

18th Int. by same. If, in 1842, you had wished to enter lands to secure the privilege of grazing your cattle in the mountains west of Bush Creek, would you have selected lands in the mountains themselves, or in the more settled country beyond?

Answer. I should have selected lands in the more settled country, for the reason that there was better grass when you would get over in the flat part, and more convenient tending to the cattle.

19th Int. by same. Are you acquainted with the handwriting of Euclid Waterhouse, one of the respondents in this cause?

Answer. I am some.

20th Int. by same. Are you acquainted with the handwriting of Francis W. and Wm. Park, sons of Luke Lea, who assisted him in the Entry Taker's office?

Answer. I am some acquainted with their handwriting.

21st Int. by same. Are the handwritings of the said sons of Luke Lea very similar, or otherwise?

Answer. They are a good deal alike.

22d Int. by same. Is there any resemblance between the handwriting of Euclid Waterhouse and those of the said sons of Luke Lea?

Answer. They are somewhat alike.

23d Int. by same. Is the paper now shown you, marked exhibit A to this deposition, and signed by Euclid Waterhouse, in the handwriting of said Waterhouse?

Answer. I should say it was, to the best of my knowledge.

24th Int. by same. Please to look on the paper now shown you, purporting to be the original of a deed from William P. Lea to John Davis, dated 18th June, 1846, covering the land in dispute, and say whether there is or is not a strong resemblance in the handwriting of that paper and that before shown you marked exhibit A.

Answer. I would say in some things there is a considerable likeness.

25 Int. by same. By what name was Wm. Park Lea usually called by his family and friends?

Answer. I believe he was generally known by Park Lea.

26th Int. by same. How was Park Lea's name usually written on the maps and records of the entry taker's office about the time you made your entries at one cent per acre in the year 1842?

Answer. I do not now recollect whether it was written in full, William Park Lea or William P. Lea.

27th Int. by same. How did Wm. Park Lea usually sign his name?

Answer. Notwithstanding I have seen it often, I cannot now think how he signed his name.

28th Int. by same. Is the name "William P. Lea" signed to the paper now shown you, being the deed to John Davis referred to in my 24th interrogatory, the signature of Wm. Park Lea?

Answer. I would think it was.

29th Int. by same. Please to state your reasons for believing that to be the signature of Wm. Park Lea?

Answer. My best reason is that I know he wrote a very pretty hand, and this is such.

30th Int. by same. Does not Euclid Waterhouse also write a very pretty hand?

Answer. He does.

31st Int. by same. How long have you been acquainted with complainant?

Answer. I have been acquainted with him since the fall of 1838.

32d Int. by same. By what name was complainant generally known?

Answer. He was generally known by the name of William P. Lea.

33d Int. by same. When did you first learn complainant's full middle name?

Answer. I have understood that pretty much ever since my first acquaintance with him.

34th Int. by same. Was complainant ever called by the name of Pinckney until about the time this suit was commenced?

Answer. Not that I ever heard of.

35th Int. by same. Are you acquainted with the handwriting of Dr. P. J. G. Lea and of Jas. Armstrong Lea?

Answer. I am some acquainted with them.

36th Int. by same. Please to state whether the papers now shown to you by the Commissioner, being locations of land in the Ocoee District, Nos. 6991, 6992, 6993, 6994, and 6995, in the name of William P. Lea, dated 15th April, 1842, are in the handwriting of Dr. P. J. G. Lea.

Answer. I should say to the best of my knowledge that they are in the handwriting of Dr. P. J. G. Lea.

37th Int. by same. Please to state in whose hand are the papers now shown you by the Commissioner, being locations of lands in the Ocoee District, Nos. 6983, 6984, 6996, and 6997, in the name of William P. Lea, dated 15th April, 1842, and No. 5446, in the same name, dated 5th April, 1842.

Answer. I do not know, except No. 5446, which is in the handwriting of James Armstrong Lea, as I believe.

38th Int. by same. Please to state whether all the locations shown you are for lands lying near the farm formerly belonging to Caswell Lea, on the Hiwassee River, known as the Big Savannah.

Answer. They are all, to the best of my knowledge, lying in that neighborhood, and near the Big Savannah.

39th Int. by same. If you are acquainted with the general character of the complainant, please to state what it is.

Answer. So far as I know of his general character, I never heard anything but good of him.

40th Int. by same. Is not complainant remarkably negligent of his own interests where by so doing he can oblige others?

Answer. I really do not know.

41st Int. by same. Please to state whether locations tendered to the entry taker, and certified copies of locations (certificates of entry), are not always written or printed on slips of paper a few inches wide?

Answer. So far as I know or have observed they are.

Cross-examination.

Question by resp'ts' sol. Did you ever know of any person living below the mountains entering lands in Ducktown for grazing purposes?

Answer. Yes, sir, I did, or least knew persons who said they did.

By same. State who those persons were, and where the lands entered by them for that purpose lie.

Answer. George C. Harris and Silas Bell, of Monroe County. Bell entered in Ducktown; but I don't know exactly where Harris entered, but somewhere up in the mountains there.

By same. Whereabouts in Ducktown do the lands entered by Silas Bell for that purpose lie?

Answer. The lands that I understood Bell entered lie about two miles north of the mines.

By same. By what means do you know that he entered the lands there for grazing purposes.

Answer. I heard them both talk about it.

By same. Whereabouts in Monroe County did each of those gentlemen live at the time they entered said land, and how far from the Savannah farm?

Answer. George Harris at that time lived about two miles south of Madisonville, and Bell about six miles southeast of Madisonville, and from 25 to 27 miles from the Savannah farm, as well as I now recollect.

By same. If you had entered land in the flat country in Ducktown for grazing purposes, on account of the grass being better there than in the mountains, would you have had your cattle grazed or herded some eight or ten miles from there in the mountains, where the grazing was not so good in your opinion?

Answer. I would not.

By same. State how far from the Savannah farm the lands described in the locations shown you in your examination in chief lie.

Answer. As near as I can say, I should think they are all within some three or five miles of the east part of the Savannah farm.

By same. Are you the same William Grant whose deposition has before been taken in this cause?

Answer. I am. And further this deponent saith not.

WILLIAM GRANT.

Exhibit A to the second deposition of William Grant.

CONASAUGA, TENN., *October 24th*, 1845.

Rec'd of James Lackey, Esq., of Roane County, four dollars by the hands of William P. Lea, for two hogs he sold of mine, which were purchased of John Meed, Jr., in the spring of 1855.

EUCLID WATERHOUSE.

John H. Robertson, aged about 60 years, a witness for compl't, being next introduced and sworn, deposes and says:—

1st Interrogatory by complainant's agent. Please to look on the paper now shown you by the commissioner, purporting to be a deed from William P. Lea to John Davis, dated 18th June, 1846, and say who were present at your office when said deed was proved by Young Davis, one of the subscribing witnesses.

Answer. If there were any other persons present except the subscribing witnesses to the same, I don't now recollect who, if there were any others.

2d Int. by same. Was not John Caldwell, one of the respondents in this cause, present when you took the probate of said deed by Young Davis?

Answer. Not that I recollect of.

3d Int. by same. When Young Davis proved said deed, did he swear that he had seen the bargainer sign it, or had heard him acknowledge it as his act and deed?

Answer. As appears from my certificate he did, that is all that I know about it.

4th Int. by same. Please to try to recollect whether, in this particular case, the witness, Young Davis, did not swear merely that the name, Young Davis, signed to said deed was his, said Davis's, signature.

Answer. If it was so, I have no recollection of it. My certificate shows how the matter was done.

5th Int. by same. Do you never give your official certificate of probate of deeds without the witness swearing specially that he saw the bargainer sign or acknowledge the signature for the purposes contained in such paper?

Answer. I never do.

And further deponent saith not.

JOHN H. ROBERTSON.

J. C. Tipton's 2d Deposition.

UNITED STATES OF AMERICA.

Be it remembered, that on this the 7th day of November, 1856, I, John H. Payne, Special Commissioner, &c., appointed by the Circuit Court of the United States, for the Eastern District of Tennessee, at Knoxville, to examine all witnesses, as well on behalf of William Pinckney Lea, complainant, as of the Polk County Copper Company, and Thomas H. Calloway, and other respondents, or either of them, in a certain matter of controversy, now depending in the Circuit Court of the United States for the Eighth Circuit in the Eastern District of Tennessee, did cause to come before me, at the Court House in Cleveland, Bradley County, Tennessee, Jonathan C. Tipton, aged about 39 years, a witness on behalf of the complainant, who, being duly sworn on the Holy Evangelist of Almighty God, to speak the truth, the whole truth, and nothing but the truth, deposed as follows, to wit: The taking of the following deposition was continued from Tuesday, the 4th of November, 1856, until Friday, the 7th November, 1856, by request of the complainant.

JOHN H. PAYNE, *Com'r.*

Jonathan C. Tipton, aged about thirty-nine years, being sworn and examined in behalf of the complainant, deposes and says as follows:—

1st Interrogatory by T. E. S. Rupwurin, sol. for compl't. Please state whether your deposition has been heretofore taken in this cause, and if yea, *when?*

Ans. My deposition has been taken before in this cause. I believe it was in December, 1854.

2d Int'y by the same. Please to look at the book now shown you, being Record of Locations, letter B, belonging to the office of the Entry Taker of the Ocoee District, and turn to the record of Entry No. 6115, now standing in the name of John B. and Thomas W. Maston, and state whether the said record is now in the same condition that it was when your former deposition was taken.

Ans. My recollection is not distinct in regard to the condition of said record when my deposition was before taken, but if it is not in the same condition now that it was at that time, I cannot detect it.

3d Inter'y by the same. Please to state whether the name of William P. Lea or William Park Lea, as the enterer of said location No. 6115, was or was not legible on said record at the time your former deposition was taken, though in some degree effaced at that time.

Answer. I do not recollect as to whether or not either of the above names were legible at the time my other deposition was taken, but at this time I can discover traces of the letter W in the beginning of the name, and the letter L in the latter part of the name.

4th Interrogatory by the same. Please state whether the letter P

or the name of Parke is visible at all in the record, as it now stands, or whether there is any other part of the name of William P. Lea or William Park Lea legible or visible, but the portions you have indicated in your answer above.

Ans. The old marks or traces between the letters mentioned in my answer above, are so dim that I cannot make out any distinct letter or letters.

4th Inter'y by the same. Please state how the obliteration of the name appears to have been effected.

Ans. From feeling of the paper upon which the original name was written, I judge it was scraped.

6th Inter'y by the same. Please to look on the map or plan of the Ocoee District now shown you, and belonging to the files of the Entry Taker's office of said District, and turn to the map of fractional township 4 south, range 5 east of the basis line, northwest quarter of section 22, now marked with the name of James Davis as general enterer, and say whether, when your former deposition was taken, there were or were not traces of the name of Wm. P. Lea as general enterer, at one cent on the east half of said quarter, and whether it now appears on said map; if yea, is it still visible, and if not, how it appears to be defaced, if such seems to be the case.

Ans'r. I do not recollect, at this time, as to whether the name of William P. Lea, or any traces of said name, were upon the quarter section of land, as laid down upon said map or book, at the time of taking my deposition before, but there is no trace of such name upon it at this time.

7th Inter'y by the same. If you were in the office of the register for the Ocoee District with A. M. Lea, complainant's agent, about the last of November, 1854, please to state whether the certified copy of Entry No. 5446, covering the land in dispute, was then sought for by you; and if yea, whether it was shown to you or not.

Ans. I was in the register's office, referred to in the above question, about the time mentioned, and a search was made by the parties for the certified copy, but was not found or shown to me as I now recollect.

8th Inter'y by the same. Please to state, as nearly as you can recollect, what you then said to the said agent as to your ability to say who made the alteration in the original record of Grant No. 5744, covering the land in dispute, as to the insertion of the letters "ark" in the name in the quarter.

Answer. I do not now remember of having said anything to said agent as to my ability to say who made the alteration or addition of the letters ark in the name mentioned, but if I did, I do not remember as to who it was.

9th Int. by the same. Please to state whether you were in the Ocoee Bank early in the forenoon of the day on which your former deposition was taken; and if yea, please say whom you left in the bank.

Answer. I was in the Ocoee Bank on the morning of the commencement of my former deposition; as well as I now remember, T. H. Calloway, E. Waterhouse, T. J. Campbell, S. A. Smith, F. W. Lea, and G. W. Rowles, were all in the bank-room whilst I was in there, but as to who I left in there I do not recollect.

10th Int. by the same. Please to state whether you came directly from the bank to the office of the Entry Taker and Register of the Ocoee District when your deposition was to be taken; and if yea, at what time of the day you came to said office, and whom you found in it.

Answer. I do not recollect as to whether or not I came directly to the Court House from the bank, neither do I remember the time of the day, but I believe that T. A. R. Nelson, Esq., F. W. Lea, J. S. Bradford, A. M. Lea, William Pinkney Lea, and G. W. Rowls, were in the room, but I am not certain that all mentioned were in at the moment of my entering the room, but if not, they were there in a few moments. I believe also that J. B. Cook, Esq., A. H. Keith, E. Waterhouse, and T. H. Calloway, were present, or came in soon afterward.

11th Interrogatory by the same. Please to state whether on coming into the said office you asked any one for the certified copy of the land in dispute; and if yea, of whom you asked it, and what was said about it.

Answer. I believe that the certified copy referred to was called for by me or some one else, but as to what was said about it, my recollection of the facts are not sufficient to state.

12th Interrogatory. Please to state whether you did or did not say at that time, that if you could not see the certified copy, you would have to swear that you made the alteration in the record of the grant covering the land in dispute, or words to that effect.

Ans. I have no recollection of making the remarks alluded to above, but did say that I believed the addition of the words ark in the grant was made by myself from the appearance of the handwriting.

13th Interrogatory by the same. Please state if you recollect who next came into the Entry Taker's Office on the day above after yourself.

Answer. As well as I recollect, Messrs. Calloway, Keith, and perhaps Waterhouse. I think they came in about the same time that I entered the room.

14th Inter'y by the same. Please to state whether in the conversation which ensued, and in which the parties named took a part, any two of them agreed as to what they meant by the certified copy in their answers to complainant's bill, and whether each one did not point to a separate entry on the books of the office, and claim *that* as the certified copy to which they alluded in their said answers, or what you may recollect of said conversation.

Ans. There was a difference of *opinion* with some of the parties

as to what was the *certificate* alluded to, but as to their particular understandings I do not remember sufficiently to state.

Cross-examination.

1 Question. Please copy and transcribe in your deposition, word for word, the *the* Entry No. 6115, as it stands in the record of entries now before you.

Answer.

No. 6115.

John B. & Tho's W. Maston enters as general enterer 160 acres of land, southwest quarter of the of section 34 in fr. township 2 so. and range five east of the basis line in the Ocoee District, beginning at the southwest corner of said quarter section.

Entered at one $\frac{1}{10}$ cents per acre.

April 5, 1842.

The above is a true copy of the record, with the exception of the original letters or traces of the letters W & S mentioned in my testimony for the plaintiff in this cause, and some other marks or traces not legible, as I have heretofore stated in this deposition.

2 Question. You will please state if the complainant, William Pickney Lea, called on you at any time in order to ascertain what you knew about the matters in dispute; if so, was it before or after your deposition was first taken in this cause?

Answer. William Pinkney Lea called upon me as often as twice, in order to ascertain of me anything that I might know in regard to the books and papers concerning the lands in dispute, and it was before my deposition was taken the first time.

Question. You will please state if he was desirous to prove any particular point in the case, or so expressed himself; and if so, what was it? What, if anything, was said about money being no object, or that it could be had by half bushel? or what was said about the p and money in that connection, if anything?

Answer. I do not recollect that he expressed any wish to prove any particular thing, but stated in the course of conversation, that if he should be successful in this suit that his friends might bring their baskets and he would fill them.

Question. Did you or not feel or so consider that he was sounding or feeling how far he could approach you on the question of making your testimony favorable to his case? When he used the expression that his friends might bring their baskets and he would fill them, what did you take him to mean?

Answer. From the connection in which the words above mentioned were spoken, I thought at the time that he wished to regard me as his friend in this cause, but did not think that he was sincere or intended it as an offer or inducement to change my testimony from the facts in the case.

Question. In that connection did he say anything of the import-

ance that might attach as to whose handwriting the letters "ark" after the letter P were in?

Answer. He made the impression upon me that the balance of said record was in my handwriting, and that the letters ark after the P were in a different handwriting. I do not remember that he said anything as to the importance of the letters ark referred to being in a different handwriting.

Question. On the 5th day of April, 1842, when the land office opened at one cent per acre, were you then residing in the town of Cleveland? If so, you will please state whether or not on the 4th of April, and before the 5th of April, when the office opened at the one cent entry, the town of Cleveland was crowded with people waiting for the opening of the office on the next day.

Answer. I was living in the town of Cleveland at the time referred to above, and there was a considerable crowd of people in said town of Cleveland waiting on the 4th for the land office to open at one cent per acre on the 5th of April.

Question. You will state from your knowledge of the state of public opinion then in the Ocoee District, it was or not expected in advance of the opening of the office on the 5th of April, that there would be a large crowd and a wish to make entries.

Answer. It was expected in advance of the opening of the office on the 5th April above mentioned, that a great many entries would be made upon that day.

Question. On the morning of the 5th of April, 1842, and was the office opened before the time came for the taking of entries, state if the door of the office opened on the public square. Had you or not any particular friend who intended making entries on that day? From this or any other circumstance are you enabled to state whether or not the office door was not opened until the time came for making entries?

Answer. As well as I now recollect, the doors of the land office were kept shut upon the morning referred to, and as well as I remember the entries of land were not allowed to go into the house when making entries, but handed them in at the office window; the office door did open upon the public square.

Question. You will please state if you are enabled to recollect whether or not before the opening of the office, that is, the taking of the entries at the window, a crowd were in attendance before the office waiting for its opening.

Answer. As well as I recollect, there was a crowd waiting at the land office at the time referred to for the office to open.

Question. You will state whether in the office there was a counter fencing off a portion of the office for the peculiar use of the Entry Taker; and if so, on the day alluded to, considering the space left in the room, would not there have necessarily been a jam if the door had not been closed, and entries taken at the window?

Answer. There was a counter in the office of the Entry Taker

which cut off half the room, and there was a back door as well, as I remember, opening into said office, which would give admittance into that part of the room behind the counter; the room was small, and would have been crowded upon that occasion, if the door had been open.

Question. You will please state if it was or not the course of the office that entries were made either by persons coming in at the front door, or handing their locations in at the front window.

Answer. It was the course of the office for persons making entries to hand in their locations either at the window or in the house at the counter.

Question. On that day, to wit, 5th April, 1842, state whether or not anything was done but receive locations and the money with them; state whether or not the office after the 5th April was closed for several days, in order to determine who had made entries, and place their name on the plan of the district, and make out certificates of entry.

Answer. I do not think anything was done on the day referred to above by the entry taker, but receiving locations and money for the same, and the office was kept closed for several days, for the purpose above mentioned in the question.

Question. Do you recollect what time the office was opened in the morning.

Answer. I do not remember as to the precise time of the opening of the office, but think it was about 9 o'clock in the morning.

Question. Please state as near as you can the distance from the Savannah Farm, being the place formerly owned by Caswell Lea, to Cleveland, where the Ocoee land office was kept.

I suppose it to be about twenty miles.

Re-examined.

Interrogatory by sol. for comp't. Please state whether or not the entry taker's office was kept in a room adjoining the residence of Dr. P. J. G. Lea, and whether or not there was a door opening from the family room of the said Dr. Lea into the entry taker's office.

Ans. The entry taker's office was kept in a room adjoining Dr. P. J. G. Lea's family room, and I believe there was a door opening from that room into the office.

Re-cross-examination.

Question. Was, or not, the land office room the property of Dr. P. J. G. Lea? and state while it was used as the land office, this door was not kept closed, and the only entrance to the office was by the back door behind the counter, entering from the back yard, and the door opening on the public square.

Answer. The land office was the property of P. J. G. Lea, and so far as I know the door alluded to was kept closed, and the only entries to the land office was from the back door behind the counter

entering from the back yard, and the front door fronting the public square.

And further this deponent saith not.

J. C. TIPTON.

Deposition of Mrs. Charity Lea.

WM. P. LEA
vs.
POLK COUNTY COPPER COMPANY, THOMAS H. CALLOWAY, and others.

IN THE CIRCUIT COURT OF THE UNITED STATES,
for the District of East Tennessee, at Knoxville.

Interrogatories to be propounded to Mrs. Charity Lea, widow of the late A. H. Lea, of Madison County, Ala., whose deposition is to be read in evidence on behalf of complainant in above cause.

1st. Interrogatory. Please to state what you may know as the complainant's being in the State of Alabama during the years 1846 and 1847, in what he was engaged, and on whose account.

2d Int'y. If the complainant was sick at any time whilst in Alabama, please to state when, where, how long, and to what extent, giving all the facts and circumstances by which you are enabled to recall dates.

3d Int'y. If you know any other fact or thing that may be of use or benefit to either party in this cause, please to set it forth at length in your answer.

WM. P. LEA,
By his agent, A. M. LEA.

In pursuance of the annexed commission issued from the office of the Clerk of the Circuit Court of the United States, held at Knoxville, for the 8th Judicial Circuit, in the District of East Tennessee, authorizing and fully empowering me to examine all witnesses whatsoever, as well on behalf of the complainant, as on behalf of the defendants, being to me directed. I, John J. Coleman, a commissioner, appointed therein for the purposes aforesaid, have on Monday the eighteenth day of February, 1856, at the dwelling-house of Mrs. Charity Lea, in the County of Madison, and State of Alabama, the said Charity Lea, widow of the late H. H. Lea, of Madison County, Alabama, who is to me personally known, and who states herself to be about fifty-six years of age, and her having first duly sworn upon the Holy Evangelists of Almighty God, the truth, the whole truth, and nothing but the truth to speak in her answers, have propounded to her the several interrogatories (three in number of the complainant) filed in his behalf (and which are, also, hereto annexed) in a certain suit, or matter in controversy, now pending, and still undetermined in the Circuit Court aforesaid, wherein William P. Lea is complainant, and the Polk County Copper Company and Thomas H. Calloway, and others are defendants. The examination of the said witness is as follows, to wit:—

The said Charity Lea, being first duly sworn, makes, on her oath, the following answers to the several interrogatories propounded to her, namely:—

1. To the first interrogatory, the said witness answers and says: The said complainant, William P. Lea, who is a younger brother of my deceased husband (Houston H. Lea) visited this part of the State of Alabama in the winter or spring of the year 1846, and remained here, and in this region of country, until the latter part of the year 1847, when he left here with the intention of returning to his home in East Tennessee. He was, when he came here, engaged in selling bacon and flour, having brought down the river a quantity of those articles. I do not know, of my own knowledge, whose property the said bacon and flour were, but I suppose that they belonged to himself. If said property belonged to others I am not aware of it.

2. To the second interrogatory, the said witness answers and says: The said William P. Lea was sick, at my house for a long time, during the period of his stay in Alabama; but how long I am not able to state with any degree of exactness, not having kept any record of it. He was taken sick some time in the summer of 1846; and after his recovery, he had many relapses, and in fact, he was not in good health at any time during the entire time of his residence here. He went to the town of Moulton, in Lawrence County, to collect money from the sales of his bacon and flour, and was taken sick there, as I understood from him. When he was sick at my house, he was attended, at various times, by Dr. Jacob Coons, of Triana, and Dr. Preston Capihan, two physicians then residing in this vicinity. His sickness here was very severe, and at one time considered dangerous. He was also sick, for a long time near Athens, in Limestone County, and he told us, after he recovered, and returned here, that the persons where he stayed were about to send for his brother (my husband) to see him die.

3d. To the third interrogatory, the said witness answers and says: I am not aware that I know of anything else which would benefit either party to this suit, except that the said William P. Lea is a man of rather weak mind, and that his mind (never strong) was greatly weakened, impaired, and injured, by the long and repeated spells of sickness which he suffered under whilst in Alabama.

And further the said deponent, not being further interrogated, answers and says not. CHARITY LEA.

Sworn to and subscribed before me, this the 18th day of February, 1856. JOHN J. COLEMAN, *Commissioner.*

And in further pursuance of the said commission—I, John J. Coleman, a Commissioner appointed, &c., as aforesaid, have on this day, to wit, on Wednesday the 26th day of March, in the year of our Lord one thousand eight hundred and fifty-six (1856), and at the office of the Probate Judge of Madison County, in the said State of Alabama, called and caused to come before me, Joel R. Love, another

one of the witnesses named in the said commission, who is to me personally known, and is, according to his own statement, about thirty-nine years of age, and him having first duly sworn upon the Holy Evangelists of Almighty God, the truth, the whole truth, and nothing but the truth to speak in his answers, have propounded to him the several interrogatories (three in number), which are, also, hereto annexed, filed as aforesaid, in the cause aforesaid. The examination of the said witness is as follows, to wit: The said Joel R. Love, being first duly sworn, makes, on his oath, the following answers to the several interrogatories propounded to him, namely:—

Interrogatories to be propounded to Joel R. Love, of Whitesburg, Madison County, Alabama, whose deposition is to be read in evidence on behalf of complainant, in the above cause.

1st Interrogatory. Please to state what you may know in regard to complainant's being engaged in trade on the Tennessee River about the year 1846, in what capacity he was employed, if at all so employed, for whom he was doing business when he came to Alabama, and when he left the State.

2d Inter'y. If you know anything of the complainant's being sick in Alabama, please to state when, where, and to what extent; giving all the facts and circumstances which enable you to recall dates.

3d Int'y. If you know any other fact or thing that may be of use to either party in this suit, you will please to set it forth at length in your answer.

WM. P. LEA,
By his Agent, A. M. LEA.

1. To the first interrogatory the said witness answers and says: The said complainant, William P. Lea (who is, as I am informed, a brother of Col. Houston H. Lea, late of Madison County, Alabama, now deceased), came to this part of Alabama some years ago, the exact time, however, I am not prepared to state. My best impression is that it was in the spring of the year 1846, and that he remained in this part of the country for considerably more than a year; but how long, precisely, he remained, I have no means of ascertaining. He came down the Tennessee River upon and with a trading flat-boat, loaded with bacon, flour, potatoes, apples, &c., and perhaps other articles of East Tennessee produce. There he was engaged in selling out at Whitesburg, and at other points on said river, both above and below that place. I do not know, of my own knowledge, for whom the said William P. Lea was engaged in business, but I suppose that it was for himself. It was my understanding that he was concerned, as a partner, with a man by the name of Inman.

2. To the second interrogatory the said witness answers and says: I know that the said complainant, William P. Lea, was sick for a considerable space of time at his said brother's.

The time was, as well as I remember, in the year 1847; but I have no data in my possession to fix the date more accurately. He

was quite sick for a considerable time, as I believe, and had, or ought to have had, the services of a physician.

3d. To the third interrogatory the said witness answers and says: I do not know that I am acquainted with any other fact or circumstances which would benefit either party in this suit, except that my recollection of the said William P. Lea is that he was a man of very weak mind. His intellect would be, of course, further weakened, in my opinion, by a protracted spell of sickness. And further the said deponent, not being further interrogated, nor cross-interrogated at all, answers and says not. JOEL R. LOVE.

Sworn to and subscribed before me, this the 26th day of March, in the year A. D. 1856. JOHN J. COLEMAN, [SEAL.]
Commissioner, &c.

Deposition of Jacob Coons.

And in further pursuance of the said commission, I, John J. Coleman, a commissioner appointed, &c., as aforesaid, have on this day, to wit, on Saturday the fifth day of April, in the year of our Lord one thousand eight hundred and fifty-six (1856), and at the drug store of Arthur A. Acklin, in the town of Courtland, Lawrence County, State of Alabama, called and caused to come before me, the said Jacob B. Coons (who is named in the said commission as Dr. Coons, of Triana, Alabama, another of the witnesses mentioned in the said commission, who is to me personally known, and is, according to his own statement, about forty-two years of age, and him having first duly sworn upon the Holy Evangelist of Almighty God, the truth, the whole truth, and nothing but the truth to speak in his answers, have propounded to him the several interrogatories (two in number) which are, also, hereto annexed, filed as aforesaid in the cause aforesaid. The examination of the said witness is as follows, to wit:—

Interrogatories to be propounded to Doctor Coons, Triana, Madison County, Ala., whose deposition is to be read in evidence on behalf of complainant on the trial of the above cause.

1st interrogatory by complainant. Please to state whether you attended professionally on the complainant, Wm. P. Lea, when ill at the house of Col. John Maples or elsewhere in the State of Alabama, in the years 1846 and 1847; and if yea, state the place, time, character, and extent of disease, and especially its effect upon his capacity to do business.

2d Int. by same. If you know any other fact or thing that may be useful or of benefit to either party to the above cause, set it forth at length in your answer. WM. P. LEA,
By his Agent, A. M. LEA.

The said Jacob B. Coons, being next duly sworn, makes, on his oath, the following answers to the two interrogatories propounded to him, namely:—

1. To the first interrogatory the said witness answers and says: On the 25th day of March, in the year 1847, as I find from a reference to my account books, I was called upon to make a professional visit to Mr. William Lea, at the home of Mr. Henry Hall, in the town of Fiana, Madison County, Alabama. The diseases under which he was in my opinion laboring, and of which he was complaining, were piles, chronic chills, and enlargement of the spleen. I treated him for the last two diseases, and gave him medicines in addition to be used afterwards. I made no other professional visit to him, although I saw him afterwards at Col. Houston H. Lea's, in said County of Madison. I understood that said William Lea was a brother of said Houston H. Lea. At the time of my said visit to him in Fiana, I thought him bad off with a chronic disease, but not in any immediate danger. And when I saw him at his brother's he was in better health. At the time of my said visit to him in Fiana, I did not consider his condition as wholly unfitting him for the transaction of business, unless the business had been of a laborious character.

2. To the second interrogatory the said witness answers and says: I am not aware that I am acquainted with any other fact or circumstance which would, if stated, be of any material benefit or advantage to either party in said cause. I will, however, state that it is the necessary consequence of chronic chills and piles to produce a want of energy and much lassitude and inaction of mind. They also produce lowness of spirits and hypochondria, and to some extent incapacitate the mind for active exercise. And further the said deponent, not being further interrogated, nor cross-interrogated at all, answers and says not. J. B. COONS.

Sworn to and subscribed before me, this the 5th day of April, in the year A. D. 1856. JOHN J. COLEMAN, [SEAL.]
Commissioner, &c.

Deposition of E. T. Parker.

And in further pursuance of the said commission, I, John J. Coleman, a commissioner, &c., as aforesaid, have on this day, to wit, on Thursday the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-six (1856), called and caused to come before me, at the dwelling-house of Edward T. Parker, in the County of Marshall, in the said State of Alabama, the said Edward T. Parker, who is personally known, and is, according to his own statement, about fifty-eight years of age, and him having first duly sworn, upon the Holy Evangelists of Almighty God, the truth, the whole truth, and nothing but the truth to state in his answers, have propounded to him the several interrogatories (three in number) which are also hereto annexed, filed as aforesaid, in the cause aforesaid.

The examination of the said witness is as follows, to wit: The

said Edward T. Parker, being first duly sworn, makes, on his oath, the following answers to the several interrogatories propounded to him, viz.:—

Interrogatories to be propounded to Edward G. Parker, Huntsville, Ala., whose deposition is to be read in evidence on behalf of complainant at the trial of the above cause:—

1st Interrogatory. Please to state what you may know about the complainant being in the State of Alabama during the years 1846 and 1847; what was his business; in whose employment; how long he remained in the State; giving reference to any records, or other facts and circumstances, by which you may be enabled to determine dates.

2d Inter'y. If you know anything of complainant being ill in Alabama, please to tell all you know about it, as to when, where, how long; to what extent he was affected; and especially whether his illness was such as to render him unable to attend to business.

3d Int'y. If you know any other fact or thing that may be of use or benefit to either party in this cause, please to set it forth at length in your answer.

WM. P. LEA.
By his agent, A. M. LEA.

1. To the first Interrogatory the said witness answers and says: The said William P. Lea, who is a younger brother of the late Houston H. Lea, deceased, formerly of Madison County, Alabama, did visit the State of Alabama in the spring of the year 1846, and remained in the Tennessee Valley until the fall of the year 1847. I have not a perfect remembrance of these dates, but, to the best of my recollection, I have given them correctly. Said William P. Lea was in charge of a quantity of bacon and flour, which he was engaged in selling. As one of the firm of Parker & Clarke, commission merchants at Huntsville, Alabama, I sold some flour for the said William P. Lea. I do not know, of my own knowledge, in whose employment the said William P. Lea was when he came here, nor while he remained in Alabama. He staid a good deal of his time at his brother's (Houston H. Lea's), and many have been in his employment, but I do not know that he was.

2. To the second Interrogatory the said witness answers and says: I know that the said William P. Lea was sick very frequently during that time of his stay in Alabama, but I am unable to state how often he was so sick, or how long he remained so. I judge that his disease was chills, contracted on the river and in other sickly places. He was at my house several times, and was complaining when he was there, but he was not confined at my house by illness. My wife is a sister of Mrs. Charity Lea, of Madison County, and my residence was at that time near the town of Huntsville, in that county. This accounts for my knowing any about William P. Lea, and his illness, and his business in Alabama. I do not know how far his illness rendered him unable to attend to business, but I think that it

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did impair his mental faculties. His mind was, in my opinion, naturally weak.

3. To the third interrogatory the said witness answers and says: I do not, at this time, recollect anything further, which has not been already stated, calculated to be of any benefit or advantage to either party in the present controversy.

And further, the said deponent not being further interrogated, nor cross-interrogated at all, answers and says not.

E'W'D T. PARKER.

Sworn to and subscribed before me this the 20th day of March, in year A. D. 1856. JOHN J. COLEMAN, [SEAL.]
Commissioner, &c.

Depos. of Milo Smith for Compl. 1*st Depo. Dec.* 1855.

Milo Smith, aged about 46 years, being next duly sworn, deposes and says:—

1st quest. by compl't's solicitor. Are you a regular practising physician; and, if so, how long have you followed that pursuit in Chattanooga, Tenn.?

Answer. I am, and have been practising in Chattanooga seventeen years and two or three months.

2d. Please state whether or not you, in connection with Dr. J. S. Gillispie, attended upon the compl't, Wm. P. Lea, during a spell of sickness in Chattanooga, Tenn.; and, if so, state when that was, and the character of his disease.

Answer. Dr. Gillispie and myself attend Mr. Lea while sick in Chattanooga, and we have him charged on our books for said service from the first to the fifteenth day of September, 1847, with ten days' services, but I do not now recollect the nature of his disease, as I made no note of it.

3d. State whether or not he was very sick. Also state whether or not he had lately before then come to the place, and where he came from.

Answer. I do not now recollect how sick he was, nor do I know how long he had been in Chattanooga, nor where he came from.

4th. Please state at whose house he was sick at in Chattanooga.

Answer. I believe he was sick at the tavern of J. Glass.

5th. How long have you been acquainted with said Wm. P. Lea? And also state what is his capacity as a business man; and also what his character is for honesty and integrity.

Answer. I have been acquainted with Mr. Lea ten or twelve years; I do not consider him a very bright man, I know but little about him as a business man, and I have always considered him an honest man.

6th. Please state whether or not he is a very credulous and confiding man, who is easily duped and imposed on in his business transactions.

Answer. I consider Mr. Lea a credulous man, but as to his being easily duped in business transactions, I cannot say.

Cross-examination.

1st Question. You will please state if you have been acquainted with said Lea since you attended him in 1847; if so, has he continued to make Chattanooga his home, until his removal to Dalton? What business has he pursued?

Answer. I have been acquainted with Mr. Lea since 1847, and I think he considered Chattanooga until he left for Georgia. I think, so far as I know, was that of sort of general produce dealer.

Question. You will state if your acquaintance with, and observation of said Lea's course and conduct, enables you to state, whether he was very fond of money and very anxious to acquire property.

Answer. From my acquaintance with Mr. Lea, I would say that he loved money, and loved to make it.

Question. You will please state if you at any time ever indorsed paper for said Lea in bank, or to individuals; and if so, were you ever troubled about it, or did he attend to and provide for the payment of the same?

Answer. I have indorsed paper in bank for Mr. Lea, and have never been troubled about the payment of any paper I have ever thus indorsed.

Question. You will please state if you are enabled to recollect whether the sickness in which you attended said Lea in, was of longer duration than the ten days you have spoken of, and was said disease one that effected either the mind or memory of said Lea?

Answer. I do not recollect anything about Mr. Lea's health after the ten days spoken of, but am sure that the sickness he had when I attended him did not effect his mind or memory.

Question. You will please state whether or not, in your opinion, said Lea's mind or memory have continued the same since you knew him in 1847, and if you knew him before that year, please so state, and when; and if so, had he undergone any change at the time you saw him in Chattanooga in 1847?

Answer. I do not know how long I have known Mr. Lea, but some ten or twelve years, and I do not think he has changed mentally in any respect, more than what growing older would produce, since I have known him.

And further this deponent sayeth not. MILO SMITH.

Deposition of F. A. Parham.

F. A. Parham, aged about 42 years, being duly sworn, deposes and says:—

Quest. 1st by compl't's sol. Please state how long you have lived in Chattanooga, Tenn., and what business you have followed there.

Answer. *Ans.* I have lived in Chattanooga since the year 1837; I am an editor and publisher.

Quest. 2. Are you acquainted with the compl't, Wm. P. Lea?

and if so, when, and under what circumstances did you form his acquaintance?

Answer. *Ans.* Some ten or fifteen years ago, I made my acquaintance with Wm. P. Lea. The circumstance was this. He came up on a steamboat, very sick and distressed. I took him in my carriage to Glasse's Hotel, where he lay sick two or three weeks. I employed a boy to wait on him day and night during his sickness, for which he paid him fifty cents. The boy and his parents considered the pay very inadequate to the service.

Quest. 3. State who attended him as physician, and what was his disease.

Ans. I cannot now remember his physicians, nor am I certain about his disease, but my impression is that it was fever; I am certain that his situation was critical and protracted.

Quest. 4. Has he ever been sick for any length of time in Chattanooga, except the time mentioned by you, since you first knew him?

Answer. He has been several times sick in and out of Chattanooga—some cases of which I knew of—others I understood from him and others who was cognizant of the fact. The cases I allude to in this answer, were subsequent to his bad sickness on our first acquaintance. I ever looked upon him, notwithstanding his actual temperance principles, as an individual subject to bad spells of sickness.

Quest. 5. State whether he was ever confined by sickness at Capt. Jno. G. Glass's hotel in Chattanooga, Tenn., except the time you speak of bringing him there from the steamboat.

Ans. I never knew him to be sick at Capt. Glass's subsequently to that time.

Ques. 6. Did the boat on which he came to Chattanooga, Tenn., come up the river from Alabama, or down the river from E. Tennessee?

Answer. Up the river.

Cross-examination.

Question. Have you been acquainted with said Lea since the time you had him brought from the river to Capt. Glass's?

Answer. *Ans.* I have.

Question. Please state if said Lea has made Chattanooga his home since then, until he left for Dalton, Georgia.

Answer. Up to the time he went to Dalton, I considered him a resident of Chattanooga. After that I understood from him and others that he was, and intended to be a citizen and do Branners at Dalton, Georgia.

Question. Before the communication was opened by railroad from Cleveland, Tennessee, to this place, Chattanooga, what channel of communication existed between the two places? Did a weekly or tri-weekly stage run between the two points?

Ans. The mails were carried a part of the time weekly, semi-

weekly, and perhaps tri-weekly, at times, in two-horse hacks and on horseback.

Question. Was there or not quite a considerable travel between citizens and others from Chattanooga to Cleveland, and from Cleveland to Chattanooga?

Answer. In those days the roads between Chattanooga and Cleveland were pretty fair, and many of our people had business with the land office at Cleveland, and in connection with business in Chancery Court, then held for this county, the travel between the places was regular, and perhaps more general than at present.

Question. State the distance by the travel alluded to between the two points.

Answer. My information is that it is between thirty-two and thirty-five miles, and by post-bills of the company it is about twice the distance by railroads.

And further deponent saith not. F. A. PARHAM.

Deposition of James Carson. Dec'r, 1855.

Dr. James Carson, aged about 50 years, being next introduced and sworn, deposes and says:—

1st Interrogatory by complainant's agent. If you have at any time been consulted professionally as physician by the complainant, Wm. P. Lea, please to state where, when, the nature of his disease, and its effect upon his mental capacity for business, especially the memory.

Answer. I recollect that some short time before or after Wm. P. Lea left Hiwassee Old Town, that he consulted me about a cutaneous disease under which he was laboring, the nature of which I at first supposed to be tetter, but afterwards, perhaps a year or two, he consulted me again, and I came to the conclusion that the affection was probably consequent upon some functional derangement or chronic lesion of a vital organ, perhaps not well understood by this deponent; but from all that I can recollect of the case, said Lea consulted me repeatedly, and I considered his health very infirm for several years, up to the year 1848, when I left Jefferson Co. Whilst I lived in Cleveland s'd Lea was still complaining, but said he had benefited by a certain nostrum which he had been using. Your deponent considered s'd Lea's memory deficient, and his mind absent, whether by disease or otherwise. The time when s'd Lea consulted me on his diseases last, in Jefferson Co., I think, was in the year 1847—when he was at my house several days.

Cross-examination by Resp'ts' Sol.

Question 1st. Was the time at which compl't consulted you last, as a physician, in 1847, shortly after he had returned from the State of Alabama, where he had had a spell of the chills and fever? if so, state whether he was not, at that time, in a condition both mentally and physically to attend to his ordinary business.

Answer. I believe he had returned from Alabama some short time previous to the time s'd Lea was at my house, in 1847, but I am not positive of that fact. His health was such that he rode out abroad to attend to business during a great portion of the two or three weeks which he at that time spent in Jefferson Co.

2d by same. Are you not nearly related to compl't, and have you not known him well from his boyhood? if so, state whether he is not a man that attends closely to his business, looks well after his interests, and collects his debts closely, and pays great attention to taking care of his property.

Answer. Wm. P. Lea is a cousin of mine; I have known him from his childhood, and have always considered him an industrious man, but very careless and negligent in some respects, often neglecting his own best interests to accommodate or spend time with his friends. I have noted remarkable instances of the kind in his history. I don't think he is remarkable for close collections, or attention to his business, nor can I consider him punctual in rightly disposing or taking care of his own property.

Re-examination.

1st Int'ry by compl't's agents. Is not the complainant remarkable for his saving and self-denying disposition, whilst liberal and kind to others?

Answer. I believe that is about his character.

2d Int. by same. Please to state when you removed to Cleveland, and whether you were consulted by complainant professionally after that time; and if yea, state how he was then affected by disease.

Answer. I think it was in the spring of 1848 when I removed to Cleveland, where I lived four years and a half, during which time said Lea consulted me as physician repeatedly, in different years perhaps, and appeared to be in a state of general ill health, at least for a considerable portion of that time. But as to the precise nature of his case, I can say nothing very deffinitely at this time, only that he often had chills and fever, and still complained of the remains of his old chronic affections.

Further this deponent saith not. JAS. CARSON.

Deposition of J. L. M. French for Comp't.

John L. M. French being next duly sworn says:—

Question 1st by compl't's sol. State what business you have been engaged in at Chattanooga, Tenn., how long you have lived there, and how long you have been acquainted with compl't.

Ans. I have been engaged in the commission business a little over five years in this place; I came to Chattanooga in September, 1850; I have been acquainted with M. P. Lea some seven years.

2d. What is s'd Lea's character as a business man? Is he regarded as a shrewd, sharp business man, or is he a credulous, confid-

ing man, who could be easily imposed upon and defrauded of his rights?

Answer. In regard to Lea's business capacity, I never considered him a shrewd trader, he never relied on his own judgment enough to be considered a good trader. He was looked upon by his acquaintances as very easily imposed upon in his business transactions, especially in loaning money when he had it. I have known instances when men obtained from him, with fair promises, that could not have duped any one else.

Quest. 3d. State whether compl't is a man of honesty and integrity in his dealings.

Answer. I believe him honorable and honest in all his transactions.

Quest. 4th. Give compl't's character for liberality, or otherwise, so far as you may know it?

Answer. I don't know.

Quest. 5th. Please state whether or not you knew at or about the time anything of the trade between compl't and one A. D. Taylor about the land in dispute; and if so, state whether or not compl't repudiated said trade shortly thereafter.

Answer. I don't know anything about it, only from hearsay, not having heard anything from either of them.

Cross-examination.

1 Question. You will please state if, so far as your knowledge and personal observation extends, said Lea manifested a strong disposition to acquire property.

Answer. He was always trying to make money, trading in produce, land warrants, &c.

2 Question. Please state if, particularly in the years 1852 and 1853, the subject of the developments of copper in the Ducktown region of country, was or not a frequent subject of conversation in Chattanooga.

Answer. There was a goodeal excitement about copper in year 1854.

Further this deponent sayeth not.

JOHN L. M. FRENCH.

Deposition of Allen Kennedy.

Question 1st by compl't's sol. Mr. Allen Kennedy will please state what business he now follows in Chattanooga, Tennessee, and how long he has been in that business.

Answer. I am keeping hotel, and have been for over five years.

Question 2d. Please state whether complainant has been a boarder with you during that time; and if so, how much of the time, and also state how long you have been acquainted with him.

Answer. Wm. P. Lea has been a boarder with me pretty much all the time that I have been keeping hotel until he left for Dalton.

Question 3d. Please state whether you ever apprised of the trade

between the complainant and one A. D. Taylor, relative to the land in dispute in this suit; and if so, state what was the course taken by the compl't shortly after said trade. Tell all you may know on the subject.

Answer. I understand that W. P. Lea had agreed to give A. D. Taylor an interest in the land with him, but after he had considered on the matter he declined it, and told me had told Taylor so.

4th. Please state whether or not it has been your understanding from compl't and others, that compl't had determined shortly after his arrangement with Turly, that he, compl't, would not allow Taylor any interest, and if any reason was assigned for not allowing it, please state what was the reason.

Answer. Calloway, Waterhouse, and all of them, except A. D. Taylor.

The defendants except to so much of the foregoing questions as seeks to introduce the declaration of complainant as evidence, or to testify as to his understanding as to what other persons not parties defendant may have said. ROWLES,

Sol. for Resp'ts, except A. D. Taylor.

Exception overruled, and witness permitted to answer.

Answer. I did understand from complainant that he had declined letting Taylor have any interest in the land, and that from the fact he considered himself overreached in the transaction.

Question 5. Do you remember anything of compl't having been sick at Jno. G. Glass's hotel in Chattanooga, several years ago, shortly after he returned from Ala.? and if so, give the date and character of his sickness.

Answer. I believe complainant was sick at John G. Glass's hotel in Chattanooga, some years ago, but I do not remember how long ago.

Question 6. Please state what is compl't's character as a business man. Is he confiding, credulous, and easily imposed on, or is he a sharp, good trader?

Answer. I believe that complainant has some business qualifications, but that he is a careless and negligent sort of man and easy to be imposed on.

Quest. 7. State whether or not compl't is a man of honesty and integrity in his dealings.

Answer. I have always taken him to be such.

Quest. 8. State whether compl't is a man of liberality towards others for one of his means.

Answer. I think he is to some extent.

Cross-examination.

1 question. Please state if said Lea was not fond of money, and very desirous of acquiring property.

Answer. I think he is fond of money, and was always industrious and trying to make money.

2 question. Please state if you recollect the year in which said Lea came to board with you, and the year in which he left.

Answer. My best recollection is that he came to my house to board in 1850, and left in 1854, and during the time he was occasionally absent.

Question. During the time said Lea boarded with you, and before July, 1854, state whether the subject of the copper developments in Ducktown was frequently spoken of by travellers or other persons at your town.

Answer. Yes, the subject of copper at Ducktown was frequently spoken of at my house before the year 1854.

Question. Are you enabled to state, what time, the month, in 1854, when said Lea moved from your house to Dalton?

Answer. I think it was in August, as I find no time of his removal on the register, and find on the register his name in Sept. as a citizen of Dalton. And further this deponent sayeth not.

A. KENNEDY.

Deposition of Thos. W. Newman.

Thos. W. Newman, aged about thirty-one years, being next duly sworn, deposes as follows:—

Quest. 1st by compl't's sol. Please state whether or not you were engaged, for some years past, with Allen Kennedy in keeping a hotel in Chattanooga, Tenn., and also state how long you have been acquainted with the compl't, Wm. P. Lea?

Answer. I was engaged as a partner in keeping the house referred to in the question commencing in the year eighteen and fifty and up to eighteen hundred and fifty-four; I have been acquainted with William P. Lea for about the term of seven years past.

Quest. 2d. Please give complainant's character as a business man. Is he a sharp and shrewd trader, or is he an unsuspecting confiding man who can be easily imposed on? Tell all about it.

Answer. I should not consider him as a shrewd business man; he was credulous, unsuspecting, and liable to be imposed upon.

Quest. 3d. State whether or not the s'd compl't is a man of integrity and honesty, and whether or not he is fair and honorable in his dealings with others.

Answer. So far as I know he is.

Quest. 4th. State whether he is avaricious and grasping, or liberal and indulgent in business affairs. State his character in this respect.

Answer. I could not say that he is an avaricious man. Yet he was considered rather a stingy man.

Quest. 5th. Were you apprised at the time of a trade between the compl't and A. D. Taylor about the land in dispute in this suit? and if so, state whether or not the complainant repudiated the trade shortly afterwards.

Answer. George W. Rowles, as solicitor for all the respondents

except A. D. Taylor, excepts to the foregoing question on the ground of its seeking to make the declaration of the complainant's evidence in his favor. Which exception is overruled.

Answer. It was my understanding from Lea that he had sold an interest in the land to Doctor Taylor, and that he, Lea, repudiated the contract soon afterwards; and I knew of my own knowledge that they were frequently together, as Doctor Taylor was often at his room about that time.

Cross-examination.

1 question. You will please state, if previous to the year 1854, and while said Lea was boarding at the house of Allen Kennedy in Chattanooga, the subject of the discovery of copper and its great value, in the region of Ducktown, Tennessee, was a frequent subject of conversation at said Kennedy's house, by either his guest, or other persons.

Answer. About the year eighteen hundred and fifty-three and four the excitement was very high here, and was made the subject of conversation in and about our house frequently, and for a time was the general topic of conversation.

Question. Please throw your mind back, and state whether, according to your recollection, the greatest copper excitement was before or after the year 1854?

Answer. According to the best of my recollection it was in the latter part of the year eighteen hundred and fifty-three, and in the fore part of the year eighteen hundred and fifty-four.

Question. Was it not a frequent subject of conversation at said Kennedy's and in Chattanooga, before the excitement got as high as you have spoken of? I mean before that period was it not known that copper had been discovered in Ducktown, and was or not this a frequent subject of conversation at said Kennedy's and in Chattanooga?

Answer. The discovery of copper was made the subject of frequent conversation some time here before the excitement became so high.

Question. You will please state if for several years there has been a daily communication between Chattanooga and Cleveland, Bradley County, by railroad. What is the distance between the two points?

Answer. There has been a regular communication by railroad between these two points for two or three years past, and I think the distance by railroad is about seventy miles.

Question. You will please state from your acquaintance and also personal observation whether the said Lea is very fond of *fond* money, and anxious to acquire property.

Answer. I always considered him so from the first of my acquaintance. And further this deponent saith not.

THOMAS W. NEWMAN.

Deposition of E. G. Pearl.

E. G. Pearl, aged about thirty years, being next duly sworn, deposes and says:—

Quest. 1st by compl't's sol. Please state how long you have lived at Chattanooga, Tenn., and what business you have been engaged in there.

Answer. I have lived in Chattanooga five years, as cashier of the Union Branch Bank in that place.

Quest. 2d. Are you acquainted with the compl't, Wm. P. Lea? and if so, state how long, and also give his character and capacity as a business man, and also his character for honesty and integrity; tell fully all you may know about it.

Answer. I am acquainted with the compl't, Wm. P. Lea, commonly called Wheat Lea, and have been so for five years. I have always regarded him as a man without much intellect, but of as much energy and industry as his limited capacity allowed him. He is, in my opinion, a penny wise and pound foolish. He is a man who can be easily deluded and cajoled, and has been the victim, by common report and his own assertion, of his so-called friends.

He is close-fisted and penurious, but has always been, so far as I know, as honest as he knew how to be. He is slow in paying his debts, but I have regarded this a lack of means rather than a lack of honesty.

Cross-examination.

1st Question. I am not aware that respondents have assailed the character of Mr. Lea, but have you never heard any reports bearing on his honesty? state how this may be.

Answer. I have never in my recollection heard his character for honesty impeached. I have frequently heard it said that it was difficult to get money out of him, and have some personal knowledge of this fact, but I have regarded this as the result of his improvidence and want of capacity.

Question. State from what you may know, under all the circumstances, whether or not said Lea was the cause of the institution of this suit.

Answer. I don't know whether he was or was not the cause of the institution of this suit. I have heard one of the defendants and others say that he was a catspaw for men of better understanding and more shrewdness, and such is my own *opinion*.

Compl't by his sol. excepts to so much of said last answer as gives the statement of one of the respo'ts and rumor.

And further this deponent saith not. E. G. PEARL.

Depo. of Wilson Abercrombie, for Compl't. Jan'y, 1856.

Wilson Abercrombie, aged about 43 years, a witness for compl't, sworn as aforesaid, deposeth as follows:—

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1st Interrogatory by complainant's agent. Please to state where you have lived each year, from 1840 to 1852 inclusive.

Ans. In the year 1840, or thereabouts, I lived on Young Davis' property, on Ocoee River near Copper Hill; ever since that time, I have lived on lands then belonging to John Davis in the neighborhood of Copper Hill, within a mile and a half of it.

2d Int. by same. State, if you can, where Lucinda Wallace, daughter of Luther Wallace, claimed an occupant right at the time the price of lands in the Ocoee District fell to one cent per acre.

Ans. I don't know as I can tell that.

3d Int. by same. Do you know whether Luther Wallace claimed any occupant right at the time lands fell to one cent?

Ans. I do not know.

4th Int. by same. If you have ever lived in the house formerly occupied by Luther Wallace, situated on the west side of Davis' Mill Creek and above the mill, near the line between sections 15 and 22, in fr. township 4 S., R. 5 E., please to state who occupied it next before you did.

Ans. I lived in the house above referred to, and Luther Wallace occupied it next before I did.

5th Int. by same. When did you move into the Wallace house referred to in last question?

Ans. I have forgotten the date, it was somewhere about 1842 or 1843.

6th Int. by same. How long after Wallace moved out of the house before you moved into it?

Ans. It was but a short time.

7th Int. by same. Did you move into the house the same day that Wallace left it?

Ans. I do not recollect.

8th Int. by same. When did you leave the Wallace house?

Ans. I lived in the house one year, and the house was then moved out of the field on the same property, and I lived in it there about a year.

9th Int. by same. Who took possession of the Wallace house after you left it?

Ans. I think Baily McKay.

10th Int. by same. How long after you left the Wallace house before Baily McKay moved into it?

Ans. I do not recollect.

11th Int. by same. Did Baily McKay move into the Wallace house before you left it?

Ans. No, sir.

12th Int. by same. How long did Baily McKay live in the Wallace house?

Ans. It may be a year and may be more, I don't know the length of time.

13th Int. by same. Who went into the Wallace house next after Baily McKay?

Ans. There was nobody in it for a while up to the time Mr. Davis sold to Mastin, Caldwell, and Keith. It was vacant some one or two years before the sale by John Davis, to Keith, Mastin, and Caldwell.

14th Int. by same. Was there any other dwelling house on the lot now known as Copper Hill, during the time that you and Baily McKay occupied the Wallace house, and whilst that house was vacant?

Ans. There was not.

Cross-examination.

Question by resp'ts' sol. Under whom did you go into the Wallace house above spoken of?

Ans. John Davis.

2d by same. Under whom did Baily McKay go in after you moved out?

Ans. John Davis.

3d by same. Was there not a part of said land cleared and in cultivation at the time you went into the Wallace house, and did not John Davis claim and cultivate said land, and exercise acts of ownership over it from the time you went there, until he sold it to Keith, Mastin, and Caldwell?

Ans. There was a part of said land cleared and in cultivation at the time I went there, and John Davis claimed and cultivated said land, and exercised acts of ownership over it, from the time I went there, until he sold to Keith, Mastin, and Caldwell.

4th by same. Have not Keith, Mastin, and Caldwell, and the company claiming under them, continued to cultivate said land, and exercise acts of ownership over it from the time they purchased it of John Davis, up to this time?

Ans. As far as I know, they have.

5th by same. Has not that portion of said land that was then cleared and in cultivation, continued inclosed and in cultivation ever since?

Ans. It has.

Re-examination.

1st Int. by same. In answer to the third question of your cross-examination, you say "there was a part of said land cleared and in cultivation at the time I (you) was there;" please to state what land you referred to in that answer.

Ans. It was on the land that the Polk County Mine is on. It was 80 acres. I do not remember the number.

2d Int. by same. At the time you first went to live in the Wallace house, did you *then* understand that said house was on the 80 acre lot now known as Copper Hill?

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Ans. I did.

3d Int. by same. Under what title did the late John Davis claim the Wallace house, when you first went there to live?

Ans. Well, sir, I don't know what.

And further deponent saith not.

WILSON ABERCROMBIE.

2d Deposition of John Rogers. January 1st, 1856.

John Rodgers, a witness for complainant, aged about 46 years, sworn as aforesaid, deposeth as follows:—

1st Int. by complainant's agent. Please to state whether you have been familiarly acquainted with the land in dispute in this cause, now known as Copper Hill, since the year 1842.

Ans. I think I have.

2d Int. by same. Who has claimed that land since that time?

Ans. The first I knew about it, it was Mr. Wallace and old Mr. Davis, or some of the Davises.

3d Int. by same. If John Davis has ever claimed that land, please to state when he claimed it, and under what title?

Ans. Well, I do not know what title. Wallace, and John Davis, and the Davises claimed it formerly.

4th Int. by same. If young Davis ever claimed said land, please to state under what title.

Ans. I think he put up a claim on it, but I don't know under what title.

5th Int. by same. In your former deposition, taken in this cause at Cleveland, you spoke of acts of ownership exercised by John Davis, deceased, over the land in dispute in this cause; please to state what acts of ownership were exercised by said Davis, and when.

Ans. As for the ownership, it was for having it in possession, and renting it out. There was some little farming land on it, I do not recollect exactly where. It was some time after he should have said he got it from Wallace.

6th Int. by same. Did John Davis live on the land in dispute in this cause?

Ans. I think not.

7th Int. by same. Did John Davis keep a tenant in possession of the land in dispute in this cause continuously from June, 1846, until he sold it to Keith, Mastin, and Caldwell?

Ans. I think he did; I do not know all the time; he did a part of the time.

8th Int. by same. Please to state whether John Davis was in the habit of claiming lands in Ducktown to which he had no legal titles.

Ans. I think he did in some cases.

And further deponent saith not.

JOHN ROGERS.

Deposition of Crawford Braswell.

Crawford Braswell, aged about 39 years, a witness for compl't, being next called and duly sworn according to law, deposes and says:—

1st Quest. by complainant's sol. Please state whether or not you ever lived at or near Ducktown, Polk County, Tenn., and if so, state when and how long you lived there.

Answer. I lived in Ducktown better than two years. I went there in June, 1848, and left there, I think, in October, 1850.

2d Inter. by same. Were you acquainted with John Davis while you lived there? Also state whether or not you knew the Luther Wallace improvement, which is now known as Copper Hill?

Answer. I was acquainted with John Davis, and I knew the place he told me he had bought an occupant of, from Luther Wallace. I suppose the same is now called Copper Hill.

3d Inter. by same. Please state fully any conversation you may have had with John Davis about his claim to his Luther Wallace improvement, and about his removing the improvements, and why he did it.

Answer. I at one time purposed purchasing that eighty acres, whenever the Wallace improvement was. Davis told me that he had only the occupant of Luther Wallace; that he did not own the land. and that he had moved the improvements off to another place; and having asked him who owned the land, he stated it was entered by a man by the name of Lea. He stated he had moved off the house and fruit trees, and I think he also named the time.

4th Inter. by same. Give the date of this conversation with John Davis as near as you can.

Answer. I think it was in the month of July, 1848.

5th Inter. by same. Did you know the lines of the eighty acre tract on which the Luther Wallace improvements were placed? Or did you only rely upon what John Davis said to you about the improvements being entirely off of the tract?

Answer. I did not know the times Mr. Davis showed me when he had moved the house from, and I understand he had moved all the improvements off that place, and the stock was running on the land that had been inclosed, and if any of the fencing was left I did not notice it, the place was grown up very much with bushes. There might have been some rotten rails scattered where the fence was put, lying among the bushes and saplings.

The conversation first took place in the month of July; and in the month of August we were together on the land, and he showed me the place where the house had stood.

6th Inter. by same. Please state whether or not John Davis treated the Wallace proper. as Lea's, while speaking of it at the time you were there, in August.

Answer. The statements Davis made to me was in the month of

July, when the stated Lea had entered the land; and in the month of August, he merely showed me where the improvements had stood.

7th Int. by same. Please state whether or not you afterwards heard John Davis set up claim to the Wallace 80 acre tract, and if so, state when it was, and fully what he said to you on the subject.

Answer. In the winter of forty-nine there was a man there from Bradley County, looking at Davis's land, and talking of buying him out. I *hapened* at Davis's at the time, and he requested me not to mention the conversation to any person that had passed between us about the land, that if he sold his land to that man he should sell the Wallace place also.

8th Quest. by same. Please state whether that was the first time you heard him assume to own the 80 acre Wallace tract.

Answer. He did not profess to own it then, but said he should sell it with the *ballance*, if he sold at all.

9th Inter. by same. State whether or not John Davis had the Luther Wallace place enclosed at any time, and if so, state when he had it done.

Answer. If he had it enclosed at any time it was since I left that country.

10th Inter. by same. State whether or not the Luther Wallace place was adjoining the place on which John Davis lived, and what direction it was from the 80 acre tract on which he lived.

Answer. I think it adjoins the land on which he lived. It lay in a northern direction from where Davis lived and western direction from *from* his mills.

11th. Does the Wallace tract lie up or down the creek from Davis's mill, and on which side of the creek is it?

Answer. It lies up the creek from the mill, and on the west side.

12th. On which side of the Wallace tract was the improvement, the north or the south end?

Answer. It lay on the southeast side.

13th Int. by same. Are you acquainted with the general character of Elias Davis at the time you lived in Ducktown?

Answer. I was acquainted with his character, or what people said of him.

14th Inter. by same. Are you acquainted with his general character since you left Ducktown?

Answer. Since I have left that country I have heard people say what the people about the mines said of his character.

15th Inter. by same. From Elias Davis's general character at the time you lived in Ducktown, was he or not entitled to credit on oath?

Answer. He was not, from the general character he had among the people.

16th Inter. by same. From his general character at the time you lived in Ducktown, and his general character at present, is he or not entitled to credit on oath?

Resp'ts, by their solicitor, excepts to compl't's 15th interrogatory,

because it is not confining the witness to the character of Davis at the time he deposed; and to the 16th, because witness has not said that he is acquainted with his character since he lived in Ducktown.

A. CALDWELL, *Sol.*

Answer. So far as I have been able to learn, his character has been much the same since I left Ducktown that it was before.

17th by same. Please state whether or not you are acquainted with the general character of Young Davis.

Answer. I am.

18th Inter. by same. State whether or no Young Davis, from his general character, is entitled to credit on oath.

Answer. I could not say that he was. It was worse, if possible, than that of Elias.

19th Inter. by same. Please state whether or not you were frequently with Young and Elias and John Davis while you lived in Ducktown.

Answer. I was with them a good deal.

20th by same. How far did you live from John Davis?

Answer. I lived about a mile.

Cross-ex. by Resp'ts' Sol.

Quest. 1st. State whether or not there was a meeting-house on the land now in dispute known as the Luther Wallace land.

Answer. It was my understanding that the meeting-house was on the Wallace tract.

Quest. 2d. Was that or not known as the Davis meeting-house, and did not John Davis claim the land on which the house stood?

Answer. It was called the Davis meeting-house, but I never knew of him claiming the land.

Quest. 3d. Do you say there was no land on the Wallace tract enclosed and in cultivation during the years 1848, '49, and '50?

Answer. None in 1848, and none afterwards that I know of.

Quest. 4th. Are you acquainted with the boundaries of the Wallace land, and can you say positively that there was no land on said tract in cultivation during the aforesaid years?

Answer. I was not acquainted with the lines of the tract, and if there was any in cultivation on the tract I did not know it.

Quest. 5th. Can you then say positively that no part of the field about where the old Wallace house stood was in cultivation during the time mentioned?

Answer. No part of it was in cultivation during the time I lived there.

Quest. 6th. In your answer to compl't's 6th question, you say he (John Davis) stated that Lea had entered the lands; state where that conversation took place, when, and if any person was present; give the name or names.

Answer. This conversation took place at Davis's mill in the month of July, 1848, and there was no person present.

Quest. 7th. In your answer to compl't's 3d question, you say that John Davis told you he had only the occupant right, which he had purchased from Wallace, and that he did not own the land; state exactly what he told you, and at what time.

Answer. In the month of July, 1848, he made the statements I have made in that answer, that he had only bought the one part from Wallace, and that he did not own the land, and would not sell it, and make a title to it.

Quest. 8th. Explain how you happened to go to Davis to buy that land, if you had never heard him claiming it as his own.

Answer. His son-in-law, Carter, told me that the old man Davis, he expected, would sell me eighty acres; that he had bought an occupant claim of Wallace, which was well timbered, for coal.

Quest. 9th. Was the land Carter alluded to the same land now in dispute?

Answer. It is.

Quest. 10th. Did John Davis, in the conversation before alluded to, tell you what Lea had entered the land?

Answer. He did not tell me what Lea, but barely stated that a man by the name of Lea had entered it.

Quest. 11th. Who was it came up from Bradley County to purchase the land of John Davis?

Answer. I did not learn his name. I think his name was Mr. Grunkin, or he was a connection of a man of that name who had a ferry on Hiwassee River.

Quest. 12th. During the time you were in Ducktown, did you hear of John Davis leasing his land to a company for mining purposes?

Answer. I did not.

13th Quest. When did you leave Ducktown?

Answer. I left in the fall of 1850.

Question 14th. How far is it from Copper Hill to the last settlement in Ducktown, down next to the Frog Mountain?

Answer. When I left there, the last or lower settlement was called, about five miles below, Copper Hill.

And further this deponent saith not.

CRAWFORD BROSWELL.

Deposition of Jesse Shubird.

STATE OF TENNESSEE,
Hamilton County.

Be it remembered, that on this 15th day of September, 1856, I proceeded, at the office of Welcker & Key, in the city of Chattanooga, county and State aforesaid, to take the deposition of Jesse Shubird, James J. Riddle, Wm. Arnett, William A. Watkins, Crawford Baswell, and A. H. Johnston, in obedience to the commission hereto an-

nexed, in to be used as evidence on behalf of Wm. P. Lea, the complainant in a suit now depending in the Circuit Court of the United States, held at Knoxville, for the 8th Judicial Circuit, in the District of East Tennessee, wherein said Wm. P. Lea is complainant, and the Polk County Copper Company and Thos. H. Calloway and others are defen'ts; said depositions being taken in the presence of said Wm. P. Lea and A. G. Welcker, atto. for compl't, and E. Waterhouse and A. Caldwell, atto. for defendants.

Jesse Shubird, aged about 35 years, being first duly sworn according to law to tell the truth, the whole truth, and nothing but the truth, deposes and says:—

1st Quest. by Compl't's Sol. Please state whether or not you ever lived at or near Ducktown, in Polk County, Tenn.; and if so, state when and how long you lived there.

Answer. I did live at Ducktown; I went there in eighteen hundred and forty-eight, and lived there about three years.

2d Quest. by same. State whether or not you were acquainted with John Davis, and knew where he lived during the time you lived at Ducktown; and also state whether or not you know the Luther Wallace improvement near John Davis'.

Answer. I was acquainted with John Davis, and did know where he lived, having lived on his land during the time I lived at Ducktown; and know the Luther Wallace improvement.

Question 3d by same. State whether or not the Luther Wallace improvement was moved from the place where he first put it up; and if so, state who had it moved, and where it was moved to.

Answer. The houses, fencing, and peach-trees were moved from the place they were first put on the Luther Wallace place. They were moved by John Davis, and put on his own land.

Quest. 4. How far were these improvements taken from where Luther Wallace had put them up?

Answer. I can't exactly say, but suppose a half mile or three-quarters.

Quest. 5th by same. Please state why John Davis removed these improvements. Tell all you may have heard John Davis say on that subject.

Answer. He, John Davis, stated to me that the reason he moved them was, that he was afraid he would lose his labor, as he had understood a man by the name of Lea had entered the land, and stated that he did not own the land.

Quest. 6th. State whether or not you ever heard John Davis claim the land where the Luther Wallace improvement was, at any time while you lived with him.

Answer. The Luther Wallace place is now called Copper Hill. I think in about the year eighteen hundred and forty-nine, after the copper property came into notice, John Davis then set up a claim and sold it.

Quest. 7th by same. Do you know whether or not the Luther

Wallace improvement or property was left vacant and turned out at the time Davis removed the fencing, &c., away? And if so, state how long it was left vacant.

Answer. The property was left vacant, how long I can't say, but until Davis set up his claim, he then commenced fixing up the fencing again.

Quest. 8th. Are you acquainted with the general character of Elias Davis?

Answer. I am right smartly, having lived among the Davises during the time I lived there.

Quest. 9th. From your knowledge of his general character, state whether or not Elias Davis is entitled to credit on oath in a court of justice?

Answer. I should not believe him myself from all circumstances and from his acts.

Quest. 10th by same. State whether or not you are acquainted with the general character of Young Davis.

Answer. I am.

11th Quest. by same. From his general character you or not, think Young Davis entitled to credit on oath in a court of justice?

Answer. I should not believe he was; he was once taken up on a charge for killing a cow; and in that case some twenty-five or thirty witnesses examined who swore that they would not believe him on oath.

Resp'ts by their solicitor except to the latter part of the foregoing answer, because if the fact is as stated it can be established by better evidence.

12th Inter. by same. State how long you have known Young and Elias Davis.

Answer. I was acquainted with them about three years, all the time I lived at Ducktown.

Cross-examined.

Quest. 1st. Please state the precise time, as near as you can, when you first went to Ducktown.

Answer. I think I went there in March, eighteen hundred and forty-eight, but cannot be positive as to the month.

Quest. 2. Was the Luther Wallace house occupied at the time you went to Ducktown; and if so, by whom?

Answer. It was not occupied when I went there as the improvements had all been removed prior to that time.

Quest. 3d. Was there any house or any enclosed land on the quarter including Copper Hill, at the time you went to Ducktown?

Answer. None that I know of.

Quest. 4th. At what time was the Luther Wallace house, fencing, &c., removed?

Answer. I am unable to say, as they were removed before I went there.

Quest. 5th. How can you say then as in your answer to compl't's 3d interrogatory that the house, fencing, and peach tree were removed by John Davis and put upon his own land?

Answer. I heard John Davis say so.

Quest. 6th. At what time did Davis tell you this, and how did he happen to speak to you on this subject?

Answer. Shortly after I went there, I can't say exactly what time; John Davis, myself after passing through his farm passed upon the vacant place of Luther Wallace. He mentioned the subject himself, and told what I have heretofore stated.

Quest. 7. On which side of Davis Mill Creek was the improvement of which you have been speaking situated?

Answer. It was situated on the left hand when going up the creek?

Quest. 8th. Was there not at that time a small field enclosed between the Mill Creek and the Copper Hill?

Answer. Not to my knowledge, as I don't know whether there was or not, as I know nothing about it only as Davis told me that he had taken all off.

Quest. 9. Was there any person present when this conversation occurred between you and Davis? if so, state who it was.

Answer. There was no person present.

Quest. 10th. Where do you now live, and where have you lived since you left Ducktown?

Answer. I have lived three years in Cherokee County, Georgia, and the balance of the time near Chattanooga.

Quest. 11. Have you ever at any time had a difficulty with the Davises?

Answer. No, we all got along very well so far as I knowed.

Quest. 12th. Are you acquainted with the general character of Elias and Young Davis since you left Ducktown?

Answer. I am not.

Re-examination by Compl't's Sol.

Quest. 1st. State whether or not you have heard the character of Young and Elias Davis spoken of by those who knew them since you left Ducktown, and if so, state whether you have heard their character mentioned often or not.

Answer. I have heard their *caracters* spoken of by William Hancock, since I left Ducktown.

Quest. 2d by same. Have you been back to Ducktown since the time you first left as indicated in the former part of his deposition?

Answer. I have not.

And further this deponent saith not.

his
JESSE + SHUBIRD.
mark.

D. B. Hamill, aged about 33 years, being duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with Jesse Shubird? and if so, how long have you been, and where?

Answer. I have been acquainted with him since 1853, in and about Chattanooga.

2d Inter. by same. Are you acquainted with the general character of Jesse Shubird?

Answer. I am.

3d Inter. by same. From the general character of Jesse Shubird, do you think him entitled to credit on oath?

Answer. I do. And further this deponent saith not.

DANIEL B. HAMILL.

David C. Hamill, aged about 30 years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with Jesse Shubird? and if so, where and how long have you been?

Answer. About three years, in and about Chattanooga.

2d by same. Are you acquainted with the general character of Jesse Shubird?

Answer. I think I am.

3d Inter. by same. From Jesse Shubird's general character, do you think him entitled to credit on oath?

Answer. I do. And further saith not.

DAVID C. HAMILL.

S. Farmer, aged about 40 years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Jesse Shubird?

Answer. I am.

2d Int. by same. From Jesse Shubird's general character, do you think him entitled to credit on oath?

Answer. I do.

3d Inter. by same. How long have you been acquainted with him?

Answer. About four years.

Cross-examination by Resp'd'ts' Sol.

1st Inter. Where has said Shubird lived for the last four years, and where have you lived?

Answer. Shubird has principally lived about Chattanooga the most of his time since I knew him. I myself have lived in Georgia, Walker County, about nine miles from Chattanooga.

And further deponent saith not. S. FARMER.

Fulton R. Roberson, aged about 32 years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Crawford Braswell?

Answer. I am.

2 Int. From that general character, is he entitled to credit upon oath?

Answer. I would think so.

Cross-examination by Resp'd'ts' Sol.

1 Int. When, where, and how long have you known him?

Answer. I first became acquainted with him in Walker County, Ga., in 1851 or 1852. I think he came to that county in 1851, in the fall season. He moved to Chattanooga, as I think, in the fall of 1852. He afterwards moved back to where he now lives, in Walker County, Ga., but I am not able to give the date. I now live in Catooha County, Ga., having moved there from Walker County, Ga., in 1854, some 7 miles from Chattanooga, and 20 miles from where Braswell lives. I have been acquainted with him all the time. And further deponent saith not.

F. R. ROBERSON.

Reuben Ransom, aged about 30 years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Crawford Braswell?

Ans. I am.

2d. From Crawford Braswell's general character, do you think him entitled to credit on oath?

Answer. I do.

3d Inter. by same. How long have you known him, and how far do you live from him now?

Ans. I have known him near five years, and live about ten miles from him now.

Cross-examination by Resp'd'ts' Sol.

1 Int. Where has Crawford Braswell lived since you have known him, and where have you lived?

Ans. He has lived in Walker County, Ga., part of the time, and part in Chattanooga, Tennessee; and I have lived all the time in Walker County, Ga. And further this deponent saith not.

REUBEN RANSOM.

Certified in due form by Sam'l Hamill, Com'r.

Depositions of M. W. Alexander and others, taken at Chattanooga, Tenn., 7th Nov., 1856.

STATE OF TENNESSEE,
Hamilton County.

Be it remembered, that, on this 7th day of November, 1856, at the office of Welcker & Key, in the City of Chattanooga, in said County and State, I, Samuel Hammill, a Justice of the Peace in and for said County and State, proceeded, in obedience to the commission and

notices hereto annexed, to take the depositions of the following witnesses on behalf of the complainant, to be used as evidence on the trial of a cause now pending in the Circuit Court of the United States, held at Knoxville, for the 8th Judicial Circuit in the District of East Tennessee, wherein William P. Lea is complainant, and the Polk County Copper Company, Thomas H. Calloway, and others, are respondents; said witnesses being duly examined in the presence of A. G. Welcker, solicitor for complainant, and of J. B. Cooke, solicitor for respondents.

M. W. Alexander, aged about 50 years, a witness for complainant, being first duly sworn according to law, deposes as follows:—

1st Interrogatory by complainant's solicitor. Are you acquainted with Crawford Braswell? and if so, state how long and when you became acquainted with him.

Answer. I had some acquaintance with Crawford Braswell. Became acquainted with him, I think, in 1853 and 1854, for the term of time I do not recollect. He has been absent some year or more from this place. Since then I have no acquaintance.

2d Inter. by same. Are you acquainted with the general character of said Braswell?

Answer. I cannot say that I am. And further this deponent saith not. M. W. ALEXANDER.

P. Simmerman, aged about 26 years, being next called and duly sworn according to law, deposes as follows:—

1st Inter. by compl't's sol. Are you acquainted with Crawford Braswell and Jesse Shubird, or either of them?

Answer. I am acquainted with each of them.

2d Inter. Are you acquainted with the general character of Crawford Braswell and Jesse Shubird, or either of them?

Answer. I think I am, when they lived here.

3d Inter. What was Crawford Braswell engaged at while he lived in Chattanooga, and how long since he left?

Answer. He was a watchman in this city, some time; and afterwards he kept a boarding-house. I think he left about two years ago, as well as I can recollect.

4th Inter. by same. From the general character of said Braswell and Shubird, do you think they or either of them entitled to credit when on oath?

Answer. They are.

5th Inter. Where does Jesse Shubird now live, and what is your occupation at present, and how long have you been so engaged?

Answer. I do not know where Jesse Shubird now lives; I have seen him frequently here in town lately. I have been engaged at present as Marshall of the City of Chattanooga, as has been during this year. I became acquainted with Jesse Shubird when I was a watchman in the year 1854.

Cross-examination by Respondents' Solicitor.

1st Int. How long did they live here, to your knowledge?

Answer. Jesse Shubird lived here about six months after I became acquainted with him, and I cannot tell how long he had lived here before.

And further this deponent saith not. P. SIMMERMAN.

Robert Smith, aged about 37 years, being next duly sworn according to law, deposes as follows:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Crawford Braswell?

Answer. I am not. I merely knew him when he was watchman, but know nothing about his general character.

And so further this deponent saith not. ROB'T SMITH.

W. W. Gunter, aged about 30 years, being next duly sworn according to law, deposes and says:—

1st. Inter. by compl't's sol. Are you acquainted with the general character of Jesse Shubird, or Crawford Braswell, or either of them?

Answer. I know Jesse Shubird, and have, since 1853, his general character. I do not know Crawford Braswell.

2d Int. by same. From Jesse Shubird's general character, do you think him entitled to credit on oath?

Answer. I do.

3d Inter. by same. Where has said Shubird lived since you became acquainted with him?

Answer. He has not lived over 8 miles from Chattanooga since I first knew him.

Cross-examination by Respond'ts' Sol.

1st Int. Has said Shubird lived at the same place ever since you knew him? If not, state at what different places he has lived, and how far they are from each other.

Answer. He has not lived at the same. He has lived in Chattanooga, one mile from Chattanooga, near the Chat'a tannery, and somewhere on the W. and A. R. Road. The distance from each place will not exceed 9 miles.

2d Int. Do you know his general character in all or each of the various neighborhoods where he had lived?

Answer. I have not heard anything against his *carrecter* at either place.

3d Int. Do you know what his general character has been at these places?

Answer. It has been good so far as known.

And further deponent saith not. W. W. GUNTER.

John A. Minnis, aged about 41 years, being next duly sworn, according to law, deposes as follows:—

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1st. Are you acquainted with Jesse Shubird and Crawford Braswell; and, if so, how long have you been? Also state where they now live.

Answer. I am acquainted with Crawford Braswell. I do not think that I am with *Shubird*. I became acquainted with Braswell in this place, Chattanooga, in 1852 or 1853, probably 1853. Braswell, I understand, now lives in "McLernore's Cove," Walker County, in the State of Georgia.

2d Int. by same. Are you acquainted with the general character of Crawford Braswell?

Answer. I suppose I was as well acquainted with the character he formed here as I am ordinarily with men on the same acquaintance. I think I was acquainted with his character formed here.

3d Int. by same. From Crawford Braswell's general character, would you think him entitled to credit on oath?

Answer. I would give him credit on oath from that character.

4th Inter. by same. What business are you engaged at?

Answer. I am engaged in the practice of law.

Cross-examination by Respond'ts' Sol.

1st. Int. Do you know where Braswell came from when he came to Chattanooga? Also state how long he lived here.

Ans. I am not certain that I know where he came directly from when he came here. I learned from him and others that he had lived in Ducktown, Polk County, Tenn. After I became acquainted with him here I was in Ducktown, and learned that he had lived there. I also learned he originally came from N. Carolina. I do not now remember how long he lived here—some year or two; I think more than one; it seems to me some two years. I have occasionally seen him since he left here.

2d Int. Are you acquainted with his general character in Ducktown before he came here?

Ans. I do not think I am or was. "In Ducktown" I heard him spoken of by but few men; I think some two of the Davises. They gave him a very bad character. They, from their conversation, were *hostile* to him, as I thought. One other man, a Mr. Burgis, also spoke of him, and gave him a bad character, impeaching his honesty. Burris was not hostile to him, that I know of. These, to my recollection, were all the men I then heard speak of him; and, therefore, I do not think I could say I know his character there.

And further this deponent saith not. J. A. MINNIS.

E. Frank Kirksey, aged about 26 years, being duly sworn according to law, deposes and says:—

1st Int. by compl't's sol. Are you acquainted with the general character of Jesse Shubird, or Crawford Braswell, or either of them?

Answer. I am not acquainted with Crawford Braswell, and have

been acquainted with Jesse Shubird about eighteen months, and think I know the estimate put on his character by his neighbors.

2d Inter. by same. From Jesse Shubird's general character, is he entitled to credit on oath?

Ans. I think he is.

Cross-examination by Resp'd'ts' Sol.

1 Int. Where and when did you know him and his general character?

Answer. In and about Chattanooga, and for the last eighteen months.

And further this deponent saith not. E. F. KIRKSEY.

S. H. Haisten, aged about 48 years, being next duly sworn according to law, deposes and says:—

1st. Inter. by compl't's sol. Are you acquainted with the general character of Jesse Shubird and Crawford Braswell, or either of them?

Answer. I am not acquainted with the character of Jesse Shubird; but I think I am well acquainted with the general character of Crawford Braswell.

2d Inter. by same. From Crawford Braswell's general character, do you think him entitled to credit on oath?

Answer. I do.

3d Inter. by same. When and where did you become acquainted with Braswell's character?

Answer. In Chattanooga in 1853 and 1854. I cannot be positive, but I think he left Chattanooga in 1854.

And further deponent saith not.

S. H. HAISTIN.

Thompson Coats, aged about 44 years, being next duly sworn according to law, deposes and says:—

1st Int. by compl't's sol. Are you acquainted with the general character of Jesse Shubird?

Answer. I think not.

And further this deponent saith not. his
THOMPSON + COATS,
mark.

Britain Riddle, aged about years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Crawford Braswell and Jesse Shubird, or either of them?

Answer. I think I have been acquainted with the general character of Jesse Shubird for the last eighteen or twenty months; but am not acquainted with Crawford Braswell.

2d Inter. by same. From Jesse Shubird's general character, do you think him entitled to credit on oath?

Answer. I would believe him on oath.

Cross-examination by Resp'ts' Sol.

1 Int. Do you form your opinion of Shubird's character from what the people say about him where he lives, or from your own personal acquaintance with him?

Answer. I form my opinion from both, but mostly from my own personal acquaintance. I had never knew anything of him till about the time I mentioned in my first answer, when he came to my shop to get work done.

And further this deponent saith not.

BRITAIN RIDDLE.

Milo Smith, aged about 47 years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Jesse Shubird?

Answer. I know Jesse Shubird, and as far as I know him, he has the character of an honest poor man.

2d Inter. by same. From the general character of said Shubird, do you think him entitled to credit on oath?

Respondents by their solicitor except to the last above question, because the witness has not stated he is acquainted with the general character of s'd Shubird. T. B. COOKE, *Sol.*

3d Inter. by same. Please to state definitely whether or not you are acquainted with the general character of Jesse Shubird.

Answer. I am acquainted with Jesse Shubird, and have been for a year or two; and he has, as stated before, the character of an honest poor man; I have been in the habit of giving his family medicine as a physician, and never heard ought against him, and feel that his general character with his neighbors is that of an honest man.

4th Int. by same. From his general character, is said Shubird entitled to credit on oath?

Answer. I would believe him.

Respondents, by sol., except to the last question and answer for the same reason assigned in the above exceptions.

J. B. COOKE, *Sol.*

Cross-examination by Resp'd'ts' Sol.

When and where have you been acquainted with said Shubird?

Ans. I have been acquainted with him here. Know not where he came from, nor how long he has been here.

And further this deponent saith not. MILO SMITH.

Daniel R. Rawlings, aged about 54 years, being next duly sworn according to law, deposed and says:—

1st Inter. by compl't's sol. Are you acquainted with the general

character of Jesse Shubird and Crawford Braswell, or either of them?

Answer. I am not acquainted with Shubird. I knew Mr. Braswell when he was watchman in Chattanooga in 1854, and I think *I think* I knew his general character whilst he acted in that capacity.

2d Int. by same. From the general character of Crawford Braswell, do you think him entitled to credit on oath?

Answer. I think from my acquaintance with him that he is.

3d Int. by same. What was your employment at the time you became acquainted with said Braswell, and what is now?

Answer. I was then and am now Recorder of the city of Chattanooga.

Cross-examination by Respondents' Sol.

1 Int. Do you speak of said Braswell from your own personal acquaintance, or from what the people who knew him said about him?

Ans. From my own acquaintance.

Re-examination.

1st Inter. by compl't's sol. Please state definitely whether or not you became acquainted with the general character of Crawford Braswell while he lived in Chattanooga as an officer; that is, the character he had among those who knew him.

Answer. I think I knew his general character whilst he was watchman. He was recommended and elected as a steady, sober man, and I think he was considered an honest man.

2d Inter. by same. From that general character, do you think said Braswell entitled to credit on oath?

Answer. I think he is.

And further this deponent saith not.

Respd'ts except to the last question and answers, because the witness has not stated he was acquainted with the general character of said Braswell.

J. B. COOKE, *Sol.*

D. R. RAWLINGS.

Thomas Boydston, aged about 36 years, being next duly sworn, according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Crawford Braswell?

Answer. I was acquainted with Crawford Braswell's general character some time in the year 1854, while he lived in Chattanooga.

2d Int. by same. From that general character, is said Braswell entitled to credit on oath?

Answer. I think he was.

Cross-examination by Resp'ts' Sol.

1 Int. How long did you know him?

Ans. About twelve months.

And further this deponent saith not.

THOS. BOYDSTON.

Peter Rape, aged about 31 years, being next duly sworn according to law, deposes and says:—

1st Int. by compl't's sol. Are you acquainted with the general character of Jesse Shubird?

Answer. I have been for the last 12 or 14 months.

2d Int. by same. From Jesse Shubird's general character, is he entitled to credit on oath?

Ans. He is, so far as I know.

Cross-examination by Resp'ts' Sol.

1 Int. Where has said Shubird lived for the last 12 or 14 months, and how far have you lived from him?

Ans. He has lived in one of my houses in the limits of Chattanooga about two months of the time; he has lived near to me all the time, except a few months he was on the railroad about 8 miles from this place.

And further this deponent saith not.

his
PETER + RAPE.
mark.

E. Thurman, aged about 50 years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Jesse Shubird?

Answer. I am, for some two years past, or more.

2d Int. by same. From the general character of Jesse Shubird, do you think him entitled to credit on oath.

Ans. I should believe him on oath.

And further this deponent saith not.

ELIJAH THURMAN.

N. P. Nail, aged about 33 years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Crawford Braswell?

Answer. I think I am.

2d Int. by same. What was his employment at the time you became acquainted with him, and what was your employment at same time?

Answer. He was night watch; I was Marshall of Chattanooga.

3d Inter. by same. From the general character of Crawford Braswell, do you think him entitled to credit on oath?

Answer. I do.

Cross-examination by Resp'd'ts' Sol.

1 Int. When, where, and how long were you acquainted with his general character?

Ans. In 1854, Chattanooga, probable 10 months.

And further deponent saith not. N. P. NAIL.

Wm. Rogers, aged 35 years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Jesse Shubird?

Answer. I am.

2d Inter. by same. From s'd Shubird's general character, do you think him entitled to credit on oath?

Answer. I do.

Cross-examination by Respondents' Sol.

1st Int. When, where, and how long were you acquainted with his general character?

Answer. I think I have known him about three years in and about Chattanooga. And further this deponent saith not.

W. ROGERS.

The further taking of depositions continued over by agreement of parties until to-morrow morning at 8 o'clock.

November 7th, 1856. SAM'L HAMILL, *Com'r.*

Resumed the taking of depositions at 8 o'clock A. M., Nov. 8th, 1856, at same place named in the caption.

SAM'L HAMILL, *Com'r.*

Jesse M. Hughes, aged about 35 years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Crawford Braswell?

Answer. I think that I am.

2d Inter. by same. From Crawford Braswell's general character, do you think him entitled to credit on oath?

Answer. I do.

3d Inter. by same. State whether or not you and said Braswell live in the same neighborhood; and if so, how long have you both lived there?

Answer. We both live in the same neighborhood. I have been personally and intimately acquainted with Crawford Braswell ever since the fall of 1851, having lived neighbors at two different places in the time. I moved to the neighborhood where we now live last March.

Cross-examination by Respondents' Sol.

1 Int. In what two different places did you live neighbor to Braswell?

Answer. I first lived neighbor to him in Dade County, Ga., a short time in the fall of 1851; and then in Walker County, Ga., in the year 1852; then, since last March, since he returned from Chattanooga, in Walker County, Ga.

2d Int. by same. Have you been in his employ any portion of that time?

Answer. We have been working together as partners ever since lastMarch.

And further this deponent saith not. his
JESSE + M. HUGHES.
mark.

Lewis R. Powell, aged about 27 years, being next duly sworn according to law, deposes and says:—

1st Int. by compl't's sol. Are you acquainted with Crawford Braswell? and if so, how long have been, and where do you live?

Answer. I have been acquainted with him about three years, and live in the same neighborhood.

2d Inter. by same. Are you acquainted with the general character of Crawford Braswell?

Answer. I think that I am.

3d Inter. by same. From Crawford Braswell' general character, do you think him entitled to credit on oath?

Answer. I do.

Cross-examination by Resp'd'ts' Sol.

1 Int. Where have you lived for the last three years?

Answer. In Walker County, Ga.

2 Int. Where has Crawford Braswell lived in the last three years?

Answer. In Walker County, Ga.

3 Int. Have you been employed or associated with him in any capacity? and if so, what?

Answer. I have not.

And further this deponent saith not. his
LEWIS + R. POWELL.
mark.

Andrew Jackson Woodall, aged about 22 years, being next duly sworn according to law, deposes and says:—

1st Inter. Are you acquainted with Crawford Braswell? and if so, how long, and where have you known him?

Answer. I have been acquainted with him about four years, a part of the time at Chattanooga, and part of the time where he now lives.

2d Inter. by same. Are you acquainted with the general character of Crawford Braswell?

Answer. I am.

3d Inter. by same. From Crawford Braswell's general character, do you think him entitled to credit on oath?

Answer. I do.

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1st Inter. by compl't's sol. Are you acquainted with the general character of Jesse Shubird?

Answer. I am.

2d Inter. by same. From s'd Shubird's general character, do you think him entitled to credit on oath?

Answer. I do.

Cross-examination by Respondents' Sol.

1st Int. When, where, and how long were you acquainted with his general character?

Answer. I think I have known him about three years in and about Chattanooga. And further this deponent saith not.

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2d Inter. by same. From Crawford Braswell's general character, do you think him entitled to credit on oath?

Answer. I do.

3d Inter. by same. State whether or not you and said Braswell live in the same neighborhood; and if so, how long have you both lived there?

Answer. We both live in the same neighborhood. I have been personally and intimately acquainted with Crawford Braswell ever since the fall of 1851, having lived neighbors at two different places in the time. I moved to the neighborhood where we now live last March.

Cross-examination by Respondents' Sol.

1 Int. In what two different places did you live neighbor to Braswell?

Answer. I first lived neighbor to him in Dade County, Ga., a short time in the fall of 1851; and then in Walker County, Ga., in the year 1852; then, since last March, since he returned from Chattanooga, in Walker County, Ga.

2d Int. by same. Have you been in his employ any portion of that time?

Answer. We have been working together as partners ever since lastMarch.

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1st Int. by compl't's sol. Are you acquainted with Crawford Braswell? and if so, how long have been, and where do you live?

Answer. I have been acquainted with him about three years, and live in the same neighborhood.

2d Inter. by same. Are you acquainted with the general character of Crawford Braswell?

Answer. I think that I am.

3d Inter. by same. From Crawford Braswell's general character, do you think him entitled to credit on oath?

Answer. I do.

Cross-examination by Resp'd'ts' Sol.

1 Int. Where have you lived for the last three years?

Answer. In Walker County, Ga.

2 Int. Where has Crawford Braswell lived in the last three years?

Answer. In Walker County, Ga.

3 Int. Have you been employed or associated with him in any capacity? and if so, what?

Answer. I have not.

And further this deponent saith not. his
LEWIS + R. POWELL.
mark.

Andrew Jackson Woodall, aged about 22 years, being next duly sworn according to law, deposes and says:—

1st Inter. Are you acquainted with Crawford Braswell? and if so, how long, and where have you known him?

Answer. I have been acquainted with him about four years, a part of the time at Chattanooga, and part of the time where he now lives.

2d Inter. by same. Are you acquainted with the general character of Crawford Braswell?

Answer. I am.

3d Inter. by same. From Crawford Braswell's general character, do you think him entitled to credit on oath?

Answer. I do.

Wm. Rogers, aged 35 years, being next duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Are you acquainted with the general character of Jesse Shubird?

Answer. I am.

2d Inter. by same. From s'd Shubird's general character, do you think him entitled to credit on oath?

Answer. I do.

Cross-examination by Respondents' Sol.

1st Int. When, where, and how long were you acquainted with his general character?

Answer. I think I have known him about three years in and about Chattanooga. And further this deponent saith not.

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Answer. I think that I am.

2d Inter. by same. From Crawford Braswell's general character, do you think him entitled to credit on oath?

Answer. I do.

3d Inter. by same. State whether or not you and said Braswell live in the same neighborhood; and if so, how long have you both lived there?

Answer. We both live in the same neighborhood. I have been personally and intimately acquainted with Crawford Braswell ever since the fall of 1851, having lived neighbors at two different places in the time. I moved to the neighborhood where we now live last March.

Cross-examination by Respondents' Sol.

1 Int. In what two different places did you live neighbor to Braswell?

Answer. I first lived neighbor to him in Dade County, Ga., a short time in the fall of 1851; and then in Walker County, Ga., in the year 1852; then, since last March, since he returned from Chattanooga, in Walker County, Ga.

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1st Int. by compl't's sol. Are you acquainted with Crawford Braswell? and if so, how long have been, and where do you live?

Answer. I have been acquainted with him about three years, and live in the same neighborhood.

2d Inter. by same. Are you acquainted with the general character of Crawford Braswell?

Answer. I think that I am.

3d Inter. by same. From Crawford Braswell's general character, do you think him entitled to credit on oath?

Answer. I do.

Cross-examination by Resp'd'ts' Sol.

1 Int. Where have you lived for the last three years?

Answer. In Walker County, Ga.

2 Int. Where has Crawford Braswell lived in the last three years?

Answer. In Walker County, Ga.

3 Int. Have you been employed or associated with him in any capacity? and if so, what?

Answer. I have not.

And further this deponent saith not. his
LEWIS + R. POWELL.
mark.

Andrew Jackson Woodall, aged about 22 years, being next duly sworn according to law, deposes and says:—

1st Inter. Are you acquainted with Crawford Braswell? and if so, how long, and where have you known him?

Answer. I have been acquainted with him about four years, a part of the time at Chattanooga, and part of the time where he now lives.

2d Inter. by same. Are you acquainted with the general character of Crawford Braswell?

Answer. I am.

3d Inter. by same. From Crawford Braswell's general character, do you think him entitled to credit on oath?

Answer. I do.

Cross-examination by Resp'd'ts' Sol.

1 Int. How near have you lived to him, and have you been in his employ, or associated with him in any manner?

Answer. I have lived within about three miles of him, and have neither been in his employ nor associated with him, more than having been in his company frequently.

And further this deponent saith not. his
ANDREW + J. WOODALL.
mark.

Daniel Woodall, aged about 26 years, being next called, and duly sworn according to law, deposes and says:—

1st Inter. by Compl't's Sol. Please state where you live, where Crawford Braswell lives, and how long he has lived there to your knowledge.

Answer. I live in Walker County, Ga., about 25 miles from this place. Crawford Braswell now lives in the same neighborhood. He lived there some four years ago; he then moved to Chattanooga, and, I think, stayed there about one year, and then returned to Walker County, where he now lives.

2d Inter. by same. Are you acquainted with the general character of Crawford Braswell?

Answer. I am.

3d Inter. by same. From Crawford Braswell's character, is he entitled to credit on oath?

Answer. He is.

Cross-examination by Resp'ts' Sol.

1st Int. Where did Crawford Braswell come from when he first came to Walker Co., Ga., and how long did he live there before coming to Chattanooga?

Answer. He came from Dade County, Ga. He lived in Walker County about a year before he came to Chattanooga.

2d Int. Does he now live in the same place he did before coming to Chattanooga, and how far do you live from him?

Answer. He lives in the same neighborhood, and I live about three miles from him.

3d Int. What do you think constitutes a man's general character?

Answer. The general opinion of the people.

And further this deponent saith not. his
DAVID + WOODALL.
mark.

Deposition of John C. Bryson.

Aug., 1856.

STATE OF GEORGIA,
Rabun County.

WM. P. LEA
vs.
POLK COUNTY COPPER COMPANY, THOS. H. CALLOWAY, and others.

In the Circuit Court of the United States for the District of East Tennessee, at Knoxville.

By virtue of a commission to me directed from the honorable Circuit Court of the United States for the District of East Tennessee, at Knoxville, I have caused John C. Bryson, aged about thirty-three years, a resident of Rabun County, State of Georgia, the witness in said commission named, to come before me at my residence in said county and State, where there was no one present but witness and myself, this the thirtieth day of August, 1856, and being duly sworn true answers to make to certain interrogatories to said commission attached, deposeth and answereth as follows, in his own handwriting, to wit:—

WM. P. LEA
vs.
POLK COUNTY COPPER COMPANY, THOS. H. CALLOWAY, and others.

In the Circuit Court of the United States for the District of East Tennessee, at Knoxville.

Interrogatories to be propounded to John C. Bryson, of Rabun County, Georgia.

Int'y 1. Please to state whether you have at any time since December, 1852, or shortly before that time, entered into any contract or agreement with one Nelson Carter, for the purchase of the tract of land upon which the said Carter lived at that time.

Int'y 2. Please to state particularly what that tract was, whether it is what is now known as the Mary's Mining Company's property, and how it lies in reference to what is known as Copper Hill, giving the State, county, range, township, section, quarter, and part of the quarter where said tract lies.

Interrogatory 3. Please to state whether you ever obtained actual possession of the land for which you may have so bargained or agreed with said Carter; and if not, state the reason you did not, particularly giving the facts as to the title of said Carter, from whom derived to him, and *him and* how; and if derived from one John Davis, then living near the said tract, state whether, in investigating the title of said Carter to said tract, you found any defect in the title of said Davis, tainting the title of said Carter; and if any, state fully and minutely what that defect was.

Interrogatory 4. If you know of any fact or thing that may be of

use to either of the parties in the above cause, please to set it forth fully in your answer.

William P. Lea, by his agent, A. M. Lea, to the first interrogatory he answers:—

Some time in the month of December, 1852, I went to Ducktown, in Polk County, Tennessee, to examine some interest belonging to Bedford Sherrer and Thompson Carter, of N. C., procured by them from one Nelson Carter, a citizen of Ducktown, in the shape of a lease for one-half the mineral interest on a certain lot or tract of land then occupied and in possession of said Nelson Carter, and in which said Sherrel and T. Carter had promised me an interest. On my arrival in Ducktown, I soon became satisfied in regard to the rumor that had reached me in North Carolina, where I then resided, of the richness of the copper mines in that region. On inquiring for the aforesaid Nelson Carter, I found him residing on and claiming ownership of a tract or parcel of land immediately adjacent, and east of the lands on which one John Caldwell & Co. was then operating for copper ores, and had recently purchased the same from one John Davis, of that place, and from whom the said N. Carter said he had purchased a part of the land he then claimed; and while I was then there, had it run out and marked, and a title made from John Davis to the said Nelson Carter for about forty acres, and represented to be the northeast corner of the southwest quarter of the section south and east of, and adjoining, the school section, on which one Samuel Congdon then resided, and divided from the southern portion of the east half of the said quarter by a conditional line then run and marked out between John Davis and said Nelson Carter; the township and range I do not recollect now. I then returned to N. C., and proposed to said Sherrer and Carter to accept the interest they had offered me, telling them I was pleased with the prospects. They proposed to sell out to me, and said they had been making some propositions to one Jabal F. Parks. We met at said Parks' next day, and Parks and myself bought them out. I then shortly after returned to Ducktown, in Polk County, presented my lease to said Nelson Carter on the said forty acres, telling him what we gave said Sherrel and Carter for it. Nelson Carter then proposed selling out to me his entire premises, consisting of another tract of land adjacent, which he claimed under grant from the State of Tennessee, besides the 40 acres he claimed under John Davis. We soon agreed, for the sum of twelve hundred dollars, for his entire possessions, having first, as I before stated, purchased the one-half of the mineral interest from the aforesaid Sherrel and Carter. I took deeds from the said Nelson Carter then, and rented the farming part of the land to the said Nelson Carter for one year, entered into writings about that, and put him in possession as my tenant, which was in the month of December, 1852. The next morning I inquired of persons present at John Davis' how long I would have to get my deeds recorded. Some said one time, and some another; but John Caldwell, who was well known

as an extensive operator in the copper lands of that region, replied that I would have twelve months, he believed. I took it for granted, and asked him to do us the favor of carrying them down to Benton, and have them registered for us, and also the deed from John Davis to Nelson Carter, which had not been recorded neither, he cordially said he would do so with pleasure. I then thought all was right; for as John Caldwell and Company had just purchased of John Davis a part of the same lot of Carter's 40, I took it for granted the titles were all right, or they with their shrudeness and knowledge of Tennessee lands and Co. would have discovered it; therefore I did not trouble myself looking after the chain of titles. Soon after my return to my home in N. C., I learned that one Elias Davis, son of the aforesaid John Davis, had swapped lands with said Nelson Carter, said Carter trading him, said Elias Davis, the identical lands I had purchased of him but a few weeks previous. I at once notified my partner, Wm. Parks, and we again returned to Ducktown, found the representation true, and Davis was to take possession the next day; we at once took possession through one Mr. Stellwell and family, and while moving them in, James Davis, a brother of said Elias Davis, came up, and after some words were passed, he remarked that Elias would out me; for in that State the first deeds recorded, if by an *in*ocent purchaser, would hold the land. I told him that if it required an *in*ocent purchaser that his brother Elias was not one, and it was quite easy proven. I then denounced his brother Elias and Nelson Carter somewhat, and implicated him, and expressed determination to hold the land. He, James, then began to reason the case, and remarked that we had better not get into law about it, for it might turn out that the title was still in John Davis, his father. I told him the title to the 40 acres was in Carter when I traded with him, and when he conveyed to us, and I cared not where it was now, I would make it come right by a suit in the Chancery Court. After some other conversation on the subject, he remarked that though I seemed determined to enter suit for the lands, he would advise me as to the 40 acres Carter claimed under John Davis, though I might not take his advice (but said he was some lawyer), that we had better not get into law, any of us, about it; for that it might turn out in the end that neither of us would hold it—that it might turn out that his father, John Davis's title was not the best—that there was a secret about that matter, I mean the titles of the 40 in question, known to only a few, that there was a person looking after that thing then. I thought he talked so to scare us off from a suit, so I at once went and filed bills against Elias, John Davis, and Nelson Carter, though John Davis had then moved to Arkansas State. Elias answered that he was *in*ocent, but that James, his brother, and Nelson Carter had gotten the thing up on purpose to defraud us (myself and Parks). Nelson Carter plead ignorance, and prayed the Court for aid. Soon after it was arranged for me to sell our interest to Samuel Congdon for fifteen thousand dollars, less the $1200 to Nelson Carter

first paid by us, and at the same time Nelson Carter and Elias Davis selling the claims to said Congdon. Carter I believe gave Congdon a general warentee to one lot and a quit claim deed the 40 he had got of the said John Davis. I gave Congdon quit claim to the whole, and so did said Elias Davis. Then where was the John Davis deed to Carter? It was lacking to make up the claim. Elias then denied having it. Congdon would not pay me the 14,800 for our interest until that was made up; said Elias then agreed to give a bond for two thousand or twenty-five hundred dollars to have it made up right or recorded in a few months, and it was thought better by Mr. Congdon, for him, said Elias, to make the bond payable to him, said Congdon, as he held the control of some large amount going to said Elias from some New York company. I consented, and it was so given by said Elias Davis, and said Samuel Congdon gave me his obligation for the payment of the residue of the $15,000 when said title was made up. Previous to the time said Elias was bound to make up said title, I learned that one John Hambright, aided by one McElrath, was setting up a claim to some of the land John Davis had sold to John Caldwell & Co., and also to the part he, John Davis, had sold to said Nelson Carter now in question, in behalf of Wm. Park Lea. I sought an interview with Hambright and McElrath, supposing that was the secret James Davis afore stated had alluded to. Messrs. Hambright and McElrath explained their position to me in the case which seemed quite plausible, denied that Wm. Park Lea ever had made John Davis a deed, said that it was a forgery in their opinion, but that if in litigation of the case John Davis should be able to prove that the paper held by him purporting to be a deed from Wm. Park Lea, covering the land in question, was made and signed by one *Frank* Lea, brother of said Wm. Park Lea, under a general verbal authority to sell and convey lands for him, Park, and which was, as they thought, the only chance for said Davis; that they could easily prove that the said paper purporting to be a deed from Wm. Park Lea to John Davis was only signed by one witness up to a then recent date, and that with facts in relation to getting the other witness to it and the paper recorded would enable them to recover for said Wm. Park Lea any way I then proposed to them, as I was under contract with Samuel Congdon, to give me a chance to buy the part which I had traded for from Carter, which they agreed to do. I then advised with Thos. H. Calloway, and he refused to advise me in the case directly, as he said he would have nothing to do in it, but gave me to understand that he believed that the foregoing statement of Hambright correct, and that I had better quiet his claim when I could get the chance to do it. In conversation with Samuel Congdon on the same subject, he advised me about the same, and that if I could not quiet Hambright for less than three thousand dollars, which amount he had agreed to take, that I had better give it; that he, Congdon, would not pay me unless that claim was quieted, so I went to Athens Court,

advised with my attorney, Mr. Gant, now Judge Gant. He also advised me to give Hambright the $3000 if he would do no better, so I done it; he, said Hambright, giving Samuel Congdon a quit claim deed to the said 40 in question, but refusing to give a general warrantee, and said Congdon accepting my order to pay said Hambright $3000 as soon as said Elias Davis made up the aforesaid title from John Davis. About the first of January, 1854, or last of December preceding, I went back to Ducktown, having heard that John Davis had returned from Arkansas, supposing that said Elias Davis, Congdon and him would have matter of the deed in question all arranged up; but not so. When I reached there I learned that John Davis had returned to Arkansas, and that he refused to make title to Congdon without further recompense, and that others were trying to buy it from him and offered him long prices. I had a conference with Elias Davis; he refused to comply with his bond, saying he could not get his father to do anything, and that he had gone back to Arkansas and carried the deed with him. I spoke of enforcing his, the said Elias Davis's, bond against him, but could not get Congdon, who had the only power, to do it. In a few days, Elias proposed through his brother, James Davis, and Samuel Congdon, that for two thousand or $2500 dollars he would arrange the matter all up; whereupon I finally agreed to do it, or, in other words, to allow Mr. Congdon that much to make the case up and get the remainder of the $15,000. Now there was still a false claim kept up by John Caldwell upon the same property, which Congdon never before regarded, but now something must be done for him, Congdon *resque*ing that, I allowed him something, I disremember now what am't. Then Mr. Congdon agreed if I would take checks or drafts on some men in New York for the principal part of the then residue of the $15,000, to be drawn at different times and months ahead, that he would see Elias Davis, and if he could make up that deed right, he, Congdon, would settle with me in the above way. He sent for said Davis, and after a short interview, came into the counting room of his store and arranged the matter all up with me, and for what purpose I never could tell, required of me again a quit claim deed to the whole lands which I gave him for myself and Parks. Elias Davis and Congdon then walked out into the porch, and without drawing any instruments of writing, making any assignments, or calling any witnesses, settled their part of the business at once. All of those amounts were taken out of the price said Congdon first agreed to pay me for the said land afore described, including the 40 acres fully described and now known as Mary's Mining Company, properly as I understand it to be.

To the second, third and fourth interrogatories, he answers: I have said all that I know or now recollect fully as it occurred, touching the case or my transactions in relation to the land in question in my answer to the first interrogatory that would be of use to either of parties in the above case. JNO. C. BRYSON.

Answered, sworn to, and subscribed before me this August 30th, A. D. 1856. JAMES BLECKLEY, *Com'r.*

STATE OF TENNESSEE,
Polk County.

Be it remembered, that on the 5th day of November, 1856, I, James H. Alexander, by virtue of the commission hereto prefixed to examine all witnesses, as well on behalf of Wm. P. Lea, complainant, as of the Polk County Copper Company and Thomas H. Calloway and others, respondents, or either of them, in a matter of controversy pending in the Circuit Court of the United States, for the District of East Tennessee, held at Knoxville, did cause to come before me at the Court House in Benton, John B. Brock as witness on behalf of the complainant in said cause, who being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows :—

John B. Brock, aged about 32 years, deposeth as follows :—

1st. Interrogatory by complainant's agent, A. M. Lea. Please to state whether you are acquainted with the general reputation of Elias and Young Davis, sons of the late John Davis, of Ducktown, Polk County, Tennessee.

Ans. I am.

2d Int. by same. Please to state under what circumstances you have made such acquaintance, and what opportunities you have had of forming an opinion as to their character for truth and veracity.

Answer. I have lived in and amidst to them, and been acquainted with them some eight years, with the exceptions of what time Young Davis was left the country ; that time I was not acquainted with him ; since he came back I have also been acquainted with him.

3d Int. by same. If you have heard any public station in Polk County, please to state what and when.

Answer. I was constable of the seventh Dist., Polk County, in the year 1853, and dept. shff. in 1854 and 1855.

4th Int. by same. From your knowledge of the general character of Elias and Young Davis, would consider them or either of them, entitled to credit on oath ?

Anwser. I could not give either of them full credit.

And further this deponent saith not. JOHN B. BROCK.

James M. Charles, aged 32 years, being next called and sworn, deposes and says :—

1st Interrogatory by complainant's agent. Please to state whether you have recently examined the family record in the Bible of William Pace, whose deposition has been heretofore taken in this cause; if yea, please to state the circumstances under which you made such examination.

I was at Mr. Pace's the day his daughter was married and the question rose in regard to her age, and Mr. Pace handed me the Bible and asked me to examine, and I did so and went on to examine the whole record.

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2d Int. by same. Please to state whether you noticed the record of the age of Margaret A. Pace; and if yea, state what was her age as it now stands recorded, and whether there was any appearance of the original record having been changed as to her age; and if any such change appeared, state what.

Answer. I do not recollect the age of Margaret A. Pace, but there was a change from the original record in the age of one of the young men, Andy, perhaps.

3d Int. by same. Please to state whether the change in the age of the boy referred to did or did not cause two of them to appear to be born in the same year?

Answer. It did.

4th Int. by same. Please to state whether you recollect having noticed upon the family record an entry to this effect: "Margaret A. Pace was born 17th August, 1843," in which the year seems first to have been written 1842, and afterwards changed to 1843.

I do not recollect distinctly, the old record was very awkward and blotched.

5th Int. by same. Please to state whether you examined the record of ages on the blank leaves between the Old and New Testaments?

Answer. I don't recollect that I did.

And further this deponent saith not. J. M. CHARLES.

Oliver A. Charles being next called, aged 26 years, deposeth and saith:—

1st Interrogatory by complainant's agent. Please to state where you reside and what is your occupation?

Answer. Reside on the road leading from the copper mines to Cleveland, and a merchant.

2d Inter'y by same. Are you acquainted with the general character of Elias and Young Davis, sons of the late John Davis, of Ducktown?

Answer. I have some personal acquaintance with Young, but no personal with Elias. I am acquainted with the general character of both.

3d Int. by same. From your knowledge of their general character, would you believe them or either of them on oath?

Answer. I could not believe either.

And further this deponent saith not. O. A. CHARLES.

Depo. of Elijah Clayton, witness for Compl't.

Elijah Clayton, aged about sixty years *old*, being introduced on behalf of the complainant, Wm. P. Lea, and after being duly sworn deposes as follows:—

Question first by complainant's solicitor. Please state whether or not you are a member of the Baptist church and a preacher of the Gospel?

Answer. Yes, sir.

2d Inter. Do you live in Polk City, Tenn., and state whether or not you are in the habit of preaching at Ducktown and Turtletown, Polk C'ty, Tenn.

Answer. Yes, sir.

3d. Are you acquainted with the general character of Young and Elias Davis?

Answer. Yes, sir, I think I am.

4th. From their general character, do you think Young Davis and Elias Davis, or either of them, entitled to credit on oath in a court of justice?

Answer. I think not.

5th Inter. State how long you have known Young and Elias Davis, and also state whether or not Young Davis is a preacher and member of the Baptist church in good standing?

Answer. I have had an acquaintance with them people ever since I moved into Polk County, which has been seventeen years last September. I never lived right close to them, but lived in the same county. Young Davis is a missionary Baptist preacher, but what his standing is I don't know. He don't belong to the side of the question I do, and I don't go to his meetings nor he don't come to mine. I have met with Young and Elias Davis at the court-house and public places, such as musters, elections, and courts, and preaching in their neighborhood.

Cross-examination.

1. Question. When did you first become acquainted with the complainant's agent, Albert Miller Lea? at whose house or at what place did you first form his acquaintance?

Answer. I don't exactly know when I first became acquainted with Albert Miller Lea, but I think it was when Caswell Lea lived on the Savannah farm. It was some time along there. I *wouldent* say at whose house it was at that I first became acquainted with him.

Question. Do you know what business said Lea was engaged in at the Savannah farm?

Answer. I don't know that he was engaged at any business at the Savannah farm.

Question. Are you acquainted with William P. Lea, the brother of Caswell Lea, who once lived at the Savannah farm?

Answer. Yes, sir.

Question. How long is it since you seen either Albert Miller Lea or William P. Lea in Polk County; give the time and place as near as you can recollect?

Answer. The last time I saw William P. Lea in Polk County was last week. The last time I saw Albert Miller Lea was last spring, I recon. He and I crossed the mountain together, and we eat dinner at Mills.

Question. Where was said Albert Miller Lea then going to?

Answer. He said he was going to Ducktown, and did do it, for I went into the edge of the village with him.

Question. While you were with him, state whether or not you at that time seen him talking to, or in company with, either Jim Davis, Elias Davis, or Young Davis?

Answer. No, sir.

Question. Before you came here, to-day, or at any time before you were summoned, were you told what the object of having your testimony was?

Answer. The sheriff who summoned me told me what I was summoned for, as he understood.

Question. Were you not told before you were summoned that your testimony was wanted, to see if you would impeach the general character of either of the Davises?

Answer. Yes, sir.

Question. Who was it that so told you?

Answer. It was William P. Lea that told me.

Question. Did William P. Lea tell you or not that he had been told that you would disqualify the Davises?

Answer. No, sir.

Question. Do you know, or did he tell you, who had told him to come and see you?

Answer. He did not tell me any such a thing, and I know no such a thing.

Question. When Lea came to you, what did he tell you was his business?

Answer. He told me his business was to see me, with a good many others.

Question. What did he say he wanted to see you for?

Answer. He said he wanted to see me as an evidence about the character of these people.

Question. Did he give the name of no one who had referred him to you?

Answer. No, he did not.

Question. Before Lea had went to see you, had no one spoken to you as to whether or not you would say, on oath, that from the general character of Elias, Jim, and Young Davis, you could not believe them on oath.

Answer. No, they never did.

Question. Did you ever have a trade of cattle with Young Davis, and if so, did any hard things or feelings grow up between you and Young Davis out of it?

Answer. I bought a piece of land from Young Davis, and paid him fifty dollars' worth of cattle for it, and he made me a deed for the land, and we never had any hard feelings about it.

Question. Please state if you and Young Davis had not a difficulty about a Devon bull.

Answer. No, sir, never. I just owed him fifty dollars for the land, and paid it in cattle, and never had any difficulty with any of the Davis in my life.

Question. How far apart do you live from the Davises, that is, how far do you live from Young Davis, from Elias Davis, and Jim Davis?

Answer. I live some twelve or fifteen mile from the Davis.

Re-examination.

1st Inter. Please state what was the name of the sheriff who summoned you to appear here.

Answer. His name was M. H. Hancock. And further this deponent saith not.

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ELIJAH + CLAYTON.
mark

Depo. of Elisha Dodson, Witness for Complainant.

Elisha Dodson, aged about seventy-one years *old*, being next introduced, and after being duly sworn, deposes as follows:—

1st Inter. by complainant's sol. Please state where you lived from 1840 to 1852.

Answer. In the year 1840, I lived in McMinn County, and when the land sales came down to one dollar per acre, I entered land on Greasy Creek, in Polk County, and my son kept *cat.* cattle *cattle* there, one year after I entered land; and after that I kept cattle there myself, and I have lived there till four or five years back, and I moved to Hiwassee, and have made five crops on the Hiwassee.

2d Inter. State whether or not folks passing from Ducktown to Benton, and to the land office at Cleveland, and to the Savannah farm, usually went by your house on Greasy Creek?

Answer. They usually went by my house from Benton to Ducktown, and frequently *stoped* and stayed with me. They did not always go past my house in going from the Savannah farm; they sometimes went a nigher way, but there was no direct road that nearer way. I lived on the main road from Benton to Ducktown.

3d Inter. State whether or not you know of Wm. P. Lea's cattle being run out of the mountains about Ducktown by a bear skin being tied on one of them, and if so, state when it was, as near as you can?

Answer. I can't tell anything about it. I heard of it being done, but I can't recollect the time. I heard them laughing about the people in Ducktown playing a trick on them; that they had tied a bear skin on one of the cattle, and drove them all out.

4th Inter. Are you acquainted with Young and Elias Davis, and if so, how long have you known them?

Answer. I was acquainted with them while I lived on Greasy

Creek; they frequently stayed all night with me; that is all the acquaintance I had with them. I saw them sometimes at Benton.

5th Inter. Are you acquainted with the general character of Young and Elias Davis?

Answer. I was while I lived on Greasy Creek. I have not heard much about them since.

6th Inter. From the general character of Young and Elias Davis, would you think them or either of them entitled to credit on oath in a court of justice?

Answer. I should not, where they are interested, at that time. I mean at the time I was acquainted them.

And further this deponent saith not. ELISHA DODSON.

Deposition of And. H. Johnston.

Andrew H. Johnson, aged about 44 years, a witness for compl't, being next called and examined by consent of parties instead of on the 29th Sept., 1856, as per notice, after being duly sworn according to law, deposes and says:—

1st Inter. by compl't's sol. Please state whether or not you are acquainted with Elias and Young Davis.

Answer. I am acquainted with Elias Davis, of the Ducktown country, and have saw Young Davis, but never had any acquaintance with him.

2d Inter. by same. Please state whether or not you are acquainted with the general character of Elias Davis among his neighbors.

Answer. The general character of Elias Davis, as far as I have heard, for veracity and truth is not good. I have often heard him spoken of in the Ducktown country, and the general opinion of him was that he was a quirkey, tricky, swindling man.

3 Inter. by same. Please state whether you feel that you know what is his general character; I mean, have you heard such a general expression of opinion about his character as to know what that character is?

Answer. I feel satisfied, from the general expression of public opinion, that he is a man of bad character, as I have often heard his character spoken of in various parts of Polk Co. as well as in Ducktown District.

4th Inter. by same. From Elias Davis' general character, please state whether or not he is entitled to credit on oath in a court of justice.

Answer. I answer I would not, from all I have heard about him through the country in which he has lived.

5th Inter. by same. Please state whether or not you are acquainted with the general character of Young Davis.

Answer. I have never heard much said about Young Davis. He was not in the country in the summer of 1854, as I was informed and heard, but was in the State of Arkansas. But moved back to Ducktown about the month of Jan'y, 1855, as well as I recollect. Know

nothing, really, of him myself as to character more than Maden thence said he was not a safe man to trade with.

6th Inter. by same. State whether or not you believe you have heard the character of Young Davis spoken of by his neighbors and acquaintances in such a way as to enable you to show fully what his general character.

Answer. I do not think that I have; he was not living in the country, and I did not hear his name made use of often in the country or neighborhood made use of; often heard it said he was intending to move back to Ducktown.

Cross-ex. by Resp'ts' Sol.

Quest. 1st. Please state whether or not the knowledge you have of the character of Elias Davis was derived from hearing his neighbors, or a majority of them, speak of him.

Answer. I hear it from persons in his neighborhood who live about and around him; whether they was a majority or not I cannot say, as I never counted to know. But I derived it from a majority that I heard speak of him to best my knowledge.

Further this deponent sayeth not, &c. A. H. JOHNSTON.

Deposition of Jno. Withron. Sept., 1856.

John Withron, aged about fifty years, deposeth as follows:—

1st Interrogatory by complainant's agent. If you live in Ducktown, please to state how long you have lived there, and what has been your occupation.

Answer. I have lived in Ducktown some 8 or 9 years, and has generly been engaged in farming and sometime teaching school.

2d Int. by same. Please to state whether, for some years after the discovery of copper ores in Ducktown, there was or was not a sort of public sentiment prevalent among some of the citizens and speculators in copper-bearing lands to the effect that a copper mine partook of the character of wild game, which any man had a right to claim if he could entrap it.

Answer. When I first began to be acquainted with the general policy of copper hunters in Ducktown, they seemed mostly to try to *ketch* the lands by buying or leasing, and then get the ores by diging for them.

3d Int. by same. If you are acquainted with Elias and Young Davis, sons of the late John Davis, formerly of Ducktown, please to state how long you have known them, and whether they have been much engaged in buying and selling lands in the copper regions.

Answer. I became acquainted, to some extent, with Elias and Young Davis shortly after I came to Ducktown, and I have some understanding that Elias Davis has made sale of some lands in Ducktown. I have *know* knowledge of Young Davis making any sale of land.

4th Int. by same. Are you acquainted with the general character of Elias and Young Davis for truth and veracity?

Answer. I suppose I have some *now*ledge of the *carec*ter of Elias and Young Davis, and from the general report I have of them I should have some doubt of believing them for truth in maters in which they were directly interested.

Respondents by their solicitor except to the last answer, because the witness gives his opinion and doubts without stating whether or not he is acquainted with the general character of the men in relation to whom he is interrogated. JNO. B. HOYL, *Sol.*

5th Int. by same. If you have ever been called upon to discredit the testimony of Elias Davis, please to state where and when.

Answer. I was questioned as to the *carrac*ter of Elias Davis some three or four years past as at Murphey Court, in Cherokee County (N. C.), as to Elias Davis being a man of truth.

6th Int. by same. Please to state whether you sustained or discredited his testimony on that occasion.

Answer. I stated to the Court, as well as I remember, that from the general report about him that I should not believe him.

7th Int. by same. Please to state whether you would attach full faith and credit to the oath of Elias or Young Davis in any matter in which they were personally interested to any considerable amount.

Answer. I could not put full faith to them in matters of importance where it would be to *there* interest to swerve from the truth.

Cross-examination, Respondents' Sol.

Have you ever heard Young Davis testify on oath at any time?

Answer. Not that I remember of at this time.

2d by same. How often have you heard Elias Davis sworn?

Answer. None but one time, as I remember of.

3d by same. In what case was that, and did he in that swear truly or falsely?

Answer. That was in a suit brought against William Watson. The plaintiff's name I don't recollect. I believe in that case he stated the truth.

4th by same. Did you ever have any difficulties with either Young or Elias Davis in law or otherwise?

Answer. None till of late; I had a bill filed against Elias Davis and others. But never had anything with Young.

5th by same. Are you acquainted with the land in controversy in this suit; if yea, how long have you been acquainted with it?

Answer. I don't *now* exactly the bounds, nor the No. of the land they are at law about.

6th by same. Are you acquainted with what is now known and called Copper Hill?

Answer. I know the place now *caled* Copper Hill?

7th by same. How long have you known it?

Answer. I came to the country some 8 or 9 years back, and frequently travelled the road leading along the ridge after that time until now; over the ridge called Copper Hill.

8th by same. Are you acquainted with the lands in which is situate what is now known as the Mary's Mine; if yea, how long have you been acquainted with them?

Answer. I have been acquainted with the land 8 or 9 years.

9th by same. Who had these lands in possession and exercised ownership over them at the time you first got acquainted with them?

Answer. Nelson Carter cultivated some lands down on the east side of the ridge, which lot included the property now *cald* the Mary Mine. Some time after I came to Ducktown, I supposing a portion of the hill or ridge to belong to John Davis, and, seeing the ores lying on the ground, *blieved thare* might be gold there, and asked him for a lease to dig; to which he stated that I was not able to carry it on.

10th by same. I wish you now to state who controlled and exercised acts of ownership over Copper Hill, and the land including Mary's Mine, from the times you became acquainted with it up to the year 1853.

Answer. Nelson Carter claimed the Mary Mine property until he, as I understood, had lost it, and I was informed sold it out to some person or persons. As to the date of those things I don't recollect. And, as to the ownership of Copper Hill, the first digging for copper that I had any knowledge of was by hands employed, as some of them told me, by John Caldwell; and John Davis told me that he had sold the property to said Caldwell, and he was there at the time when they found copper ore, and carried it to Davis' house; and I suppose, from those circumstances, that the said Davis was the proper owner.

11th by same. Was there a field at the foot of the hill between Copper Hill, as now called, and the mill, which was owned and controlled by Jno. Davis when you came to the country; and did he not cultivate and control that field up to the time he *sold to Caldwell, Keith and Mastin?*

Answer. There was a field lying between the Copper Hill and Davis' mill place, that was cultivated by John Davis; or the first knowledge that I had of the cultivation of the said field was by the hands of laborers of the said Davis; and never heard or knew of any one else claiming the said field.

12th by same. Are you acquainted with the general character of Jesse Shubird and Crawford Braswell, or either of them, for truth and veracity?

Answer. I don't suppose that I am.

And further this deponent saith not. JOHN WITHRON.

Nov. 1856.

Benjamin Wright, aged 66 years, being next called and duly sworn, deposes and says:—

1st Int'y by complainant's agent. Please to state what you may know, if anything, in relation to certain cattle herded by Wm. Watkins in the mountains; as to whose they were, where herded, and when; giving the circumstance by which you fix the date.

Ans. From circumstances, and what I understood it was in the year 1842, I saw Mr. Lea passing, and he said he was hunting cattle. I moved there in the year 1840. Isaac Smith cleared a field, and there was some cattle came into the cleared land, and he spoke to Mr. Glass to put the cattle out. They set the dogs after them. He cleared the field in 1842. As to where they were herded I know not. I cannot say they were Mr. Lea's cattle, only from hearsay. It was said they were herded by William Watkins.

2d Int. by same. State, if you can, at what time in the year the cattle came into Isaac Smith's field.

Ans. I cannot say exactly, but suppose it was in April. It was before he planted it in corn. He was late planting his crop, and before he enclosed his field.

3d Int. by same. Please to state whether the time Mr. Lea was hunting cattle was during the year that Isaac Smith made his first crop on Greasy Creek.

Answer. I think it was.

4th Inter. by same. Are you acquainted with the general character of Young and Elias Davis, sons of the late John Davis, of Ducktown?

Answer. I have heard a great deal about them for some years past.

5th Int. by same. Would you, from your knowledge of their general character, consider them entitled to credit on oath?

Ans. I could not.

And further this deponent saith not.

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BENJAMIN + WRIGHT.
mark.

William Cowden, aged 34 years being next called and duly sworn, deposeth and saith:—

1st Interrogatory by complainant's agent. Are you acquainted with the general character of Elias and Young Davis, sons of the late John Davis, of Ducktown?

Anwer. I am.

2d Int. by same. Would you, from that general character, believe them, or either of them, or not?

Answer. I *cou'd* believe them.

3d Int by same. Do you, or do you not mean to say that you

would believe them on oath in any matter in which they were interested?

Answer. I could believe them under any circumstances.

And further deponent saith not. WM. COWDEN.

Thomas R. McClary, aged about 65 years, next sworn, deposeth as follows:—

1st Interrogatory by complainant's agent. Please to state where you now live, and where you lived about the year 1852.

Answer. I now live in McMinn County; in 1852 I lived in this place (Benton).

2d Int. by same. Please to state whether you are acquainted with the general character of Elias and Young Davis, sons of the late John Davis, formerly of Ducktown, Polk County, Tennessee.

Ans. I think I am.

3d Int. by same. Please to state what opportunities you may have had for obtaining a knowledge of their character as men of integrity or otherwise.

Ans. Seeing them frequently mostly in this place from the time of the first organization of this town, until I left some three years or so since, and from what I heard men upon whom I could rely say about them.

4th Int. by same. Please to state whether you formerly kept a public house in Benton, and how long.

Ans. I kept publick house in Benton nearly four and a half years, and left off in February, 1854.

5th Int. by same. If you have ever been called on in a cause of justice to discredit the evidence of either Elias or Young Davis, state which, when, and where.

Answer. If my recollection serves me right, I was called upon to discredit the evidence of Young Davis in a case in the Circuit Court of this county (Polk), some six or seven years ago.

6th Int. by same. From your personal knowledge of the character of said Elias and Young Davis, and from other reliable information, would you have believed them on oath in a matter in which they were personally interested about the years 1852 and 1853?

To which question of complainant's agent, so far as it relates to information obtained from others, the respondents by their solicitor except. JNO. B. HEYL, *Sol.*

Which exception is overruled. JAS. SMITH, *Com.*

Ans. I don't know that I would.

7th Int. by same. Are you aware that either Elias or Young Davis, have at any time been discredited before any magistrate or Court of Record, besides the time already named?

I am not.

Cross-examination by Respondents' Sol.

How long have you been acquainted with Elias and Young Davis

respectively, and how near to them have you resided during that time?

Answer. I think it is some twelve or fifteen years since I first saw them to know them personally, and that they resided in the Ducktown region, and I lived part of the time in this place, and the other part near here. I think Young Davis went to Arkansaw five or six years ago, and that Elias moved to Georgia a year or so ago. It is said to be some thirty miles from this place to Ducktown.

2d Question by same. Have you ever heard Elias Davis examined when on oath in a court of justice?

Answer. I don't remember any particular case in which I have.

3d by same. When you say you think you are acquainted with the general character of Elias Davis in your answer in chief, do you mean that you are acquainted with his character for truth and veracity?

Answer. I do.

4th by same. Have you ever heard his character for truth and veracity brought in question in the neighborhood where he has lived?

Answer. I never have been there, and of course I could not have heard it brought in question there.

5th by same. Have you ever heard Young Davis testify when on oath in a court of justice?

Answer. Often as I have seen him here at Court, I don't now remember that I have, except the case referred to in my answer to the 5th question.

6th by same. Have you ever heard the character of Young Davis for truth and veracity brought in question in the neighborhoods where he has lived?

Ans. I have not.

7th by same. Has your acquaintance of the character of Young and Elias Davis been made up mainly before or since?

Answer. Before.

8th by same. State if you can, at what time in the spring along about the years 1840, 1841, 1842, 1843, and 1844, it was customary to take cattle to the range in the mountain of Polk County, Tennessee.

I think cattle were generally taken across the mountains from the first to the middle of April.

Re-examination.

1st Interrogatory by complainant's agent. Whilst you kept tavern in Benton, were Elias and Young Davis frequent attendants at Court in Benton, as parties litigant and otherwise?

Ans. Elias was frequently, but Young was not, for he, it was understood, had left for Arkansas. I do not *rember* certainly whether it was before or after I commenced tavern keeping that he left, but I am confident of seeing him regularly at courts, generally for many years before he left.

2d Int. by same. Were you in the habit of seeing persons residing in Ducktown, frequently at Court at Benton and elsewhere, from whom you might have learned the general character of any person in that region?

Ans. I am pretty certain I was.

3d Int. by same. Were not Elias and Young Davis men of general notoriety in Polk County for several years prior to 1853?

Ans. They certainly were.

4th Int. by same. For what were they generally known?

I think they were generally known as men concerned, in some way or other, in most of the petty disturbances and lawsuits that come down from the Ducktown region, to the Courts at Benton.

Question by respondents' sol. Was not Elias Davis an acting justice of the peace for several years in the Ducktown District?

Ans. He was.

By same. Was there not during the greater part of the time you have been acquainted with the Davis', a party known as the Conner party in Ducktown, constantly persecuting and prosecuting them in Court?

Ans. There was a time when there appeared to be two parties in Ducktown, one called the Conner, and the other the Davis party, and I think they used each other pretty roughly sometimes.

And further this deponent saith not.

THOS. R. McCLARY.

James J. Riddle, aged about 45 years, as witness for compl't, being next duly sworn according to law, deposes as follows:—

1st Ques. by compl't's sol. Please state whether or not you are acquainted with Elias and Young Davis.

Answer. I am not.

2d Ques. by same. Please state whether or not you are acquainted with the general character of Elias Davis.

Answer. From rumor, I am.

3d Inter. by same. State whether or not you know the general estimate placed on his character by his neighbors and acquaintances.

Answer. I have been warned by men who were acquainted with him, that was not a safe man to deal with, and I suppose I know the estimate put on his character by his neighbors.

4th Int. by same. From Elias Davis' general character, state whether or not he is entitled to credit on oath, in a court of justice.

Answer. I have been taught in a way that I would not believe him.

Cross-examination by Resp't's Sol.

Quest. 1st. Please state whether or not you have heard his neighbors, or a majority of them, speak of his character.

Answer. I have heard his neighbors speak of him, but not a majority of them.

Quest. Did they speak of his character for veracity; or his character as a trader?

Answer. I have heard him spoken of in both ways.

Re-examination by Compl'ts.

Quest. 1st. Please state whether or not you are acquainted with the character of Young Davis among his neighbors.

Answer. I think it likely that I have heard more said about Elias Davis than about Young. But in conversation with their neighbors, they were represented about in the same way.

Quest. 2d by same. What number of persons do you suppose you have heard speaking of Young Davis' character?

Answer. As to the number of persons I can't say, but have heard divers speak of him.

Quest. 3d by same. From Young Davis' general character, state whether or not he is worthy of credit on oath.

Answer. I could not believe him unless corroborated.

Cross-ex. by Resp'ts' Sol.

Quest. 1st. Please to state whether or not you form your opinion from hearing a majority of his neighbors speak of him.

Answer. I don't think that I have heard a majority of them speak of him.

And further this deponent saith not.

JAMES J. BIDDLE.

Deposition of Thos. L. Hoyle. Sept. 22, 1856.

Thomas L. Hoyle, aged 54 years, deposeth and says:—

1st Interrogatory by complainant's agent. Please to state what relationship, if any, you bear to either of the parties to this cause.

Answer. Brother to Jemima Maston, and uncle to the heirs of T. W. Maston, deceased. I am not related to any of the other parties.

2d Int. by same. If you have at any time heard the late Thomas W. Mastin, or either of the respondents in this cause, speak of a defect or flaw in the title to the lands in dispute, obtained by himself, Keith, and Caldwell, from John Davis, deceased; please to state by whom and where such defect or flaw was mentioned, and what it was.

Ans. I have never heard Tho. W. Mastin acknowledge any defect in the title; I have heard him speak of the Park Lea claim; but never heard him express any fears of losing the land. I don't recollect of hearing any of the other defendants speak of it, except Jno. Caldwell, and he spoke about in the same manner as T. W. Mastin.

3d Int. by same. If you have any knowledge or information from either of the respondents in this cause, of the payment or promise of any sum of money to John Mastin, son of the late T. W. Mastin, by any of the parties interested in the purchase of the land in dis-

pute, from Keith, Caldwell and Mastin's heirs; please to state what sum was so paid or promised, by whom paid, and for what purpose.

Ans. John Mastin, as agent for his mother, sold Mastin's interest in that property for fifty thousand dollars, and took notes for the same, four notes for $12,500 each; and he tells me that he got nine thousand dollars in stock, and one thousand dollars in money, in order to close the trade on his part, and since that time the company has lifted one of the notes.

4th Int. by same. Please to state by whom the $1,000 in money, and $9,000 in stock, named in your last answer, was paid to John Mastin.

Ans. I was not present, but my impression is that Gilbert paid him, from what he told me.

5th Int. by same. Have you understood from Mrs. Jemima Mastin, or other of the respondents, that the stock and money referred to in your last two answers, as received by John Mastin, was so received by him without her knowledge, until she had asserted to and ratified the sale agreed to by him as agent?

Ans. It was received, and she did not find out for some time after the trade was made, that John Mastin got any more than the $50,000, as I understood from her.

Cross-examination by Resp'ts' Sol.

1st Int. Was John J. Mastin of full age at the time of said sale, and was he not selling his individual interest in said property, as well as that of his mother, and the other heirs of Thos. W. Mastin, dec'd?

Ans. He was of full age, and selling his individual interest with the other.

2d Int. Are you acquainted with the general character of Elias Davis and Young Davis, sons of John Davis?

Ans. From rumor, I am.

3d. From that general character, are they entitled to full credit upon their oath?

Ans. I know nothing to the contrary.

Re-examination.

1st Int. by complainant's agent. In your cross-examination, you speak of John J. Mastin selling his share of the property in dispute, with that of the others; please to state whether he was not entitled to his proportionate share of the $50,000 for which the interest of the heirs was sold, and whether the stock and money received by him was so much over and above the equal share of the heirs.

Ans. He was entitled to his proportionate share of the $50,000; I don't know how to answer the other; I don't know what he intended to do with it; I know what he says he intends to do with it; he said when we talked about it that he had used the thousand dol-

lars in paying debts against the estate, and intended that if the other was ever worth anything that the other heirs should have their proportionate share of it.

Re-cross Ex——.

Question by resp'ts' sol. Did not John J. Mastin superintend the business of the estate, and was he not one of the administrators of his father?

Ans. He did, and was one of the adm'rs of his father's estate.

And further this deponent saith not.

T. L. HOYLE.

Stephen H. Crawley, aged about 57 years, next introduced and sworn, deposes and says:—

1st Interrogatory by complainant's agent. Are you well acquainted with the handwriting of William Park Lea?

Answer. Tolerably well.

2d Int. by same. Please to look at the paper now shown you by the commissioner, purporting to be the original of a deed from William P. Lea to John Davis, dated 18th June, 1846, covering the land in dispute in this cause, and state whether the name "William P. Lea," signed to that paper is the genuine signature of Wm. Park Lea.

Answer. I don't know whether it is or not.

3d Int. by same. If you have ever seen any grants issued to Wm. Park Lea for lands known to have been entered by him in the Ocoee District, please to state how the name of the grantee was written both in the body of the grants and on their backs.

Answer. I have seen grants issued to said Lea, and I think, as well as I now recollect, the name was written William Park Lea, or Wm. Park Lea—and the same way on the backs.

4th Int. by same. Did Wm. Park Lea ever convey to you by deed the east half of the northeast quarter and the east half of the southeast quarter of section 22, fr. township 4 S., R. 5 E. of basis line in the Ocoee District?

Answer. He did: and I say that that deed was intended to cover the Copper Hill, being the mine now in dispute.

5th Int. by same. What is the date of that deed?

Answer. The 3d day of July, 1848, acknowledged the 19th day of December, 1848, and registered 15th day of March, 1849, or is shown by the deed now before me.

6th Int. by same. Did Wm. Park Lea ever own the lands so conveyed to you?

Answer. Provided it calls for the potato tracts, he did.

7th Int. by same. Where are the potato tracts?

Answer. I presume they are in Polk County, and would be considered in Ducktown.

8th Int. by same. Are the lands conveyed to you by the deed just cited the same lands you bargained for with Wm. Park Lea?

Answer. Not able to answer exactly; but if the lands belonged to Wm. Park Lea, they are.

9th Int. by same. At the time Wm. Park Lea made you the deed just cited, did he intend to convey to you all the lands he then owned in Ducktown?

Answer. I presume he did.

10th Int. by same. Did he say to you at the time that he had conveyed to you all the lands he owned in Ducktown?

Answer. He did.

11th Int. by same. Did he show you the grants for the lands he conveyed to you?

Answer. No, sir; he did not.

12th Int. by same. Please to allow the deed from Wm. Park Lea to you just cited, to be made an exhibit to this deposition.

Answer. I believe I will keep my deed.

13th Int. by same. Please to compare the deed just cited from Wm. Park Lea to you, and the deed from William P. Lea to John Davis, dated 18th June, 1846, now shown you by the commissioner, and say whether they are both in the same handwriting.

Answer. I don't know.

14th Int. by same. How is the name of Wm. Park Lea written in the signature to his deed to you just cited?

Answer. It is written in full William Park Lea. In some deeds I have from him, it is written Wm. Park Lea.

Cross-examination by Resp'd'ts' Sol.

Question 1st. Have you not now in your possession a private note written to you by Wm. Park Lea about the time of the date of your deed? and if so, please state how he signed his name to said note.

Answer. I have; and he signed his name Wm. P. Lea. The date of the same is 2d day April, 1848. His name is signed twice in the same communication the same way.

Re-examination.

1st Int. by complainant's agent. Please to state the object of the private note which you have just shown, signed Wm. P. Lea.

Answer. The first part of the note to which his name was signed was for a quart of liquor, and the other was to let me know that he would make me a deed to the potato tracts.

And further deponent saith not. S. H. CRAWLEY.

Deposition of Jesse Rucker. Dec'r 21, 1855.

Jesse Rucker a witness for complainant, aged about 35 years, next being duly sworn on the Holy Evangelists of Almighty God to speak the truth, the whole truth, and nothing but the truth, deposeth and saith as follows:—

1st Interrogatory by complainant's agent. If you have any papers

signed by Wm. Park Lea, please to state the date of such papers, and how the name is written.

Ans. I have papers signed by Wm. Park Lea. I have a deed from said Lea to myself, dated 27th January, 1849; his name was written Wm. Park Lea. I also have a receipt signed the same, dated 14th of May, 1849.

2d Int. by same. If you have at any time purchased lands from Wm. Park Lea, for which you were not able to obtain titles, please to state the circumstances of the transaction.

Ans. On the 27th of January, 1849, I sold Lea a horse, he was to give me some five hundred acres of land and twenty dollars in money for the horse; he gave me either two or three certified copies of entries and gave me his title bond for the balance; after that, some time, I went down to the entry taker's office aiming to have the lands granted, and got Mr. Lea's father, Luke Lea, to examine the map, and he examined and stated that the land that my certified copies called for was not entered by Wm. Park Lea; I think he said the land was entered by F. W. Lea, or at least he said it was not marked on the map as entered by Wm. Park Lea. The old man stated to the best of my recollection that Park was rather trickey. I left the certified copies with Mr. Lea, entry taker, in the office as being of no value; I never got any of the land. He came back afterwards and I gave him up the bond, and took his note for the horse except a saddle he paid me at the time, which note was afterwards sold to John Hambright. I gave up the bond, believing I could not obtain title to the land; the bond called for any land that I could find belonging to Wm. Park Lea, and I was informed by Luke Lea of the numbers of Wm. Park Lea's entries in my neighborhood, and I could not find any but what he had previously sold.

Respondents by their solicitor except to the above question and answer because it introduces as evidence the statements, declarations and transactions of Luke Lea and Wm. Park Lea in relation to matters in no wise connected with the land in controversy, and because said testimony is immaterial and irrelevant to the matters in issue.

J. B. COOKE, *Sol. for Resp'ts.*

Cross-examination by Resp'ts' Sol.

Question 1st. Please state if you also have in your *possion* a deed executed by William Park Lea to Thomas Crawford; if so, state how that deed is signed; also state if the grant for the same land is in your *possion*, and in whose name it issued.

Ans. I have a deed in my possession executed by Wm. Park Lea to Thos. Crawford. It is signed Wm. P. Lea. I have the grant in my possession for the same land is in the name of Wm. Park Lea.

And further deponent saith not. JESSE RUCKER.

Nov. 1856.

William J. Johnson, aged about 53 years, being next introduced and duly sworn, deposes and saith :—

1st Interrogatory by complainant's agent. Please to state whether you wrote the names and ages of the children of one William Pace, in his family Bible; and if aye, state when and how you came to be so employed.

Answer. I boarded at Wm. Pace's in the spring or early part of the summer of 1854, and by request of himself or wife, perhaps both, I set down the ages of his children on a blank leaf in his Bible for that purpose.

2d Int. by same. Please to state whether in recording the ages of said Pace's children, you made a mistake in the year in which any one of them was born, and made a correction of the same; and if aye, please to state which date was erroneous, and have corrected.

Answer. I do not recollect whether I made a mistake in setting down the dates or not. It may or may not have been so, but at this time I have no recollection about it.

3d Int. by same. Whence did you obtain the dates by which you made the record of ages before referred to?

Answer. I think that I transcribed from a book in the possession of Mr. Pace, but I am not positive.

4th Int. by same. Had you heard of the claim of complainant to the land in dispute before you wrote the record in Pace's Bible?

Answer. I had not.

Cross-examination.

Question. Please state as near as you can the time of the year in 1854, you made the entry's spoken of, as near as you can. What were farmers then engaged in doing? endeavor, if you can, to fix the month.

Answer. I boarded at Mr. Pace's for several months. I do not recollect at what time during my stay I made the entry. I recollect that Mr. Pace planted his crop during my stay there.

And further this deponent saith not. WM. J. JOHNSON.

Deposition of Martin Bates.

Martin Bates, aged about 55 years, being duly sworn, deposeth as follows:—

1st Interrogatory by complainant's agent. Please to state whether at any time since the deposition of William L. Pace was taken in this cause in 1855, you have heard said Pace say anything about the manner in which he had been able to fix the date when William Watkins kept the cattle of complainant at the time he gave his deposition; and if yea, state what was said by said Pace in regard thereto, together with the time, place, and circumstances of such conversation?

Ans. About a month ago he and I were together coming from Ocoee River, and he raised the talk himself that he had been accused by Mr. Lea of swearing false, and he stated to me that he was very able to state first what time that was by the date of the

age of his daughter Margaret, and I think he stated that she was born the same year that the cattle was run out. I am not certain, but I think that was what he said. He did not say anything about what he said at Cleveland, but I took it from what he said that he had fixed it the same was by the age of his daughter, and would be able to do it again.

Cross-examination by Resp'ts' Sol.

Int. 1. Did you at any time have any other conversation with Mr. Pace in relation to the deposition referred to, except the one above stated?

Ans. I don't know that ever I had.

2 Int. Has that been as much as two months ago?

Ans. I don't think it has. I think it was something about a month ago.

And further deponent saith not. his
MARTIN BATES.
mark.

Deposition of Philip H. Keith. Sept. 1856.

Philip H. Keith, aged about 37 years, being next introduced and sworn, deposes and says:—

1st Interrogatory by complainant's agent. If you have at any time heard either of the respondents in this cause speak of any defect or flaw in their title to the land in dispute, please to state when, by whom, and what was said.

Answer. I never heard any of them say anything else but that they had a good title to the property.

And further this deponent saith not. P. H. KEITH.

Depo. of Wm. Arnett. September, 1856.

Wm. Arnett, aged about 60 years, a witness for compl'ts, being next called and duly sworn according to law, deposes and says:—

1st Quest. by compl't's sol. Please state whether or not you are acquainted with the general character of Elias Davis among his neighbors and those who have had dealing with him.

Answer. I am not.

2d by same. Have you heard persons who were acquainted with his character speak of it, and if so, how many?

Answer. I have heard persons who professed to be acquainted with his character speak of him. I do not know the number, but I suppose some 8 or ten, perhaps more, and perhaps not quite so many.

3d by same. State whether or not, from what they said to you, you think you acquired a knowledge of his general character?

Answer. I don't think I did.

4th Inter. by same. Are you acquainted with the general character of Young Davis?

Answer. I think not.

Further this deponent saith not. WM. ARNETT.

Transcript of Record from Chancery Court at Cleveland, of Bill filed by Wm. Park Lea, by his Atto. in fact, Jno. Hambright, vs. *John Caldwell and others, &c. &c.*

Know all men by these presents, that we, Wm. P. Lea and John Hambright, are *are* jointly and severally held and firmly bound unto John Caldwell, James Gray, Alexander H. Keith, and John J. Mastin, in the sum of ten thousand dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally and firmly, by these presents. Sealed with our seals, and dated this 7th day of Sept., 1853.

The condition of the above obligation is such, that whereas the said William Park Lea has this day filed his bill of complaint in the Chancery Court at Cleveland, Bradley County, Tennessee, against the said John Caldwell, James Gray, Alexander H. Keith, and John J. Mastin, wherein it prayed that an injunction issue against the said John Caldwell, James Gray, Alexander H. Keith, and John J. Mastin, enjoining them from digging ore, cutting timber, or committing any other kind of waste, either by themselves, agents, hands, hirelings, or servants, upon the following lands, to wit: eighty acres, east half of the northwest quarter of section twenty-two, in the fourth fractional township south, range five east of the basis line, in the Ocoee District; forty acres, the southeast corner of the southwest quarter of section fifteen, in range, township, and district aforesaid; until the further order of said Chancery Court. Now, if the said Wm. Park Lea shall with effect prosecute his said bill of complaint, or in case he fail therein, will well and truly pay, all such damages as may be decreed against him by the injunction on the above obligation to be void, otherwise to remain in full force and virtue. Witness our hands and seals, the day and date first above written.

WILLIAM PARK LEA. [SEAL.]
By his Attorney in fact, J. HAMBRIGHT.
JOHN HAMBRIGHT. [SEAL.]

STATE OF TENNESSEE.

To the Sheriff of McMinn County, greeting:—

Whereas Wm. P. Lea has filed his bill of complaint in the Chancery Court at Cleveland, Bradley County, Tennessee, against John Caldwell, James Gray, Alexander H. Keith, and John J. Mastin, charging, as will at large appear from the copies of his bill which accompanies this writ, and which copies you will deliver to the said Alexander H. Keith and John J. Mastin at the time of executing this writ, and praying, among other things, for an injunction, which has been granted.

Now, therefore, by the order of the Hon. Thos. L. Williams, one of the Judges of the Chancery Courts for the State of Tennessee, and to me directed, you, the said sheriff, are hereby commanded to make known to the said Alexander H. Keith and John J. Mastin that they are hereby enjoined from digging ore, cutting timber, or committing any other kind of waste, either by themselves, agents, hands, hirelings, or servants, and all other persons, upon the eighty acres, the east half of the northwest quarter of section twenty-two, in the fourth fractional township south, range five east of the basis line, in the Ocoee District, and forty acres, the southeast corner of the southwest quarter of section fifteen, in range, township, and district aforesaid, until the further order of this Court. Herein fail not, and see that you make due return of this writ and the manner in which you shall execute the same to the next term of said Chancery Court, to be held at the Court-House in Cleveland, on the 4th Monday of Feb., 1854. Witness, James Berry, Clerk and Master of the said Court, at office in Cleveland, this 4th Monday of August, A. D. 1853. JAMES BERRY, *C. & M.*

By B. FRANK. STOUT, *D. C. & M.*

STATE OF TENNESSEE.

To the Sheriff of Polk County, greeting:—

Whereas Wm. Park Lea has filed his bill of complaint in the Chancery Court at Cleveland, Bradley County, Tennessee, against John Caldwell, James Gray, Alexander H. Keith, and John J. Mastin, praying, among other things, that the said John Caldwell, James Gray, Alexander H. Keith, and John J. Mastin be enjoined from digging ore, cutting timber, or committing any other kind of waste, either by themselves, agents, hands, hirelings, or servants, and all other persons, upon the eighty acres, the east half of the northwest quarter of section twenty-two, in the fourth fractional township south, range five east of the basis line, in the Ocoee District, and forty acres, the southeast corner of the southwest quarter of section fifteen, in range, township, and district aforesaid; which injunction has been granted. Now, therefore, by the order and fiat of the Hon. Thos. S. Williams, one of the Judges of the Chancery Courts in the State of Tennessee, to me directed, you, the said sheriff, are hereby commanded to make known to the said John Caldwell and James Gray that they are hereby enjoined from digging ore, cutting timber, or committing any other kind of waste, either themselves, agents, hands, hirelings, or servants, upon the above described lands, until the further order of this Court. Herein fail not; and see that you make due return of this writ to the next term of the Chancery Court, to be held at Cleveland on the 4th Monday of February next. Witness, James Berry, Clerk and Master of the Chancery Court at Cleveland, Bradley County, Tennessee, this 4th Monday of August, 1853. JAMES BERRY, *C. & M.*

By B. FRANK. STOUT, *D. C. & M.*

Know all men by these presents, that we, Wm. P. Lea, John Hambright, Thos. H. Calloway, and Binton Henergar, are held and firmly bound unto John Caldwell, Alexander H. Keith, James Gray, and John J. Mastin, in the sum of five thousand dollars, for the payment of which we bind ourselves, our heirs, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 13th day of March, 1854.

The condition of the above obligation is such, that whereas the said William Park Lea did, on the 7th day of Sept., 1853, file his bill of complaint in the Chancery Court at Cleveland, Bradley County, Tennessee, against the said John Caldwell, Alexander H. Keith, John J. Mastin, and James Gray, wherein it is prayed that an injunction be issued against the said John Caldwell, James Gray, Alexander H. Keith, and John J. Mastin, enjoining them from digging ore, cutting timber, or committing any other kind of waste, either by themselves, or agents, hands, hirelings, or servants, upon the following land, to wit: eighty acres, east half of the northwest quarter of section twenty-two, in the fourth fractional township south, range five east of the basis line, in the Ocoee District; forty acres of the southeast corner of the southwest quarter of section fifteen, in range, township, and district aforesaid; until the further order of the Chancery Court. Now, if the said Wm. Park Lea shall with effect prosecute his said bill of complaint, or in case he fail therein, well and truly pay all such damages as the said defendants have sustained or may sustain for wrongfully serving out said injunction on the above obligation to be void, otherwise to remain in full force and virtue. Witness our hands and seals, this day and date above written.

WILLIAM PARK LEA, [SEAL.]
By his Attorney in fact.
JOHN HAMBRIGHT. [SEAL.]
THOS. H. CALLOWAY. [SEAL.]
H. B. HENEGAR. [SEAL.]

W. P. LEA
vs.
JOHN CALDWELL, ALEX. H. KEITH, and others.

On this the 2d day of March, 1854, this cause came on to be heard before the Hon. Thos. L. Williams, Chancellor, upon a motion to modify the injunction heretofore ordered in this cause, and after agreement of council it is considered by the Court that the said injunction be so modified that the respondents be permitted to work the mines and sell the ore on the lands in the pleadings mentioned, and within one month from this time enter into bond with good and sufficient securities, to be approved by the master, in the sum of fifty thousand dollars, conditioned for the payment of the complainant of all damages which he has sustained or may sustain by reason of the respondents working or having worked the mines in and upon the lands mentioned in the pleadings, and also for all

damages by reason of any waste committed or to be committed on said lands pending this suit. It is further ordered that if said bond is not given within one month from this time the injunction first granted in this cause shall be reinstated and issued by the master. It is further ordered that in the event the respondents proceed to work said mines on said lands the respondents shall keep an accurate and full account of all the minerals they may take from said mines, and render such account to this Court from time to time as the Court may direct, and in rendering an account that they render a full and accurate act of all the mineral ore they may sell, or dispose of any amount received for the same.

Original Bill filed at Cleveland. (*Sept.* 1853.)

WM. PARK LEA
vs.
JOHN CALDWELL and others.

In Chancery at Cleveland Term.

WILLIAM PARK LEA by his attorney in fact, JOHN HAMBRIGHT,
vs.
JOHN CALDWELL, JAMES GRAY, ALEXANDER H. KEITH, and JOHN J. MASTIN.

To the Honorable Thomas L. Williams, Chancellor for the Eastearn Division of the State of Tennessee, presiding in Chancery at Cleveland, Bradley County, Tennessee. Your orator, William Park Lea, of the County of Jackson and State of Missouri, by his attorney in fact, John Hambright, humbly complains of John Caldwell and James Gray, of the County of Polk and State of Tennessee, and Alexander H. Keith and John J. Mastin, of the County of McMinn and State aforesaid.

And complaining, sheweth unto your honor that your orator, the said William Park Lea, is owner and has an estate in fee simple to the following described land situated in the County of Polk and State of Tennessee, to wit: eighty acres, east half of the northwest quarter of section twenty-two, in the fourth fractional township south, range five east of the basis line in the Ocoee District; forty acres, the southeast corner of the southwest quarter of section fifteen in range, township, and district aforesaid. And further complaining, sheweth unto your honor that said lands has in and upon the same a valuable copper *mind*, more particularly the forty acres last above described; that the said defendants by themselves, their agents, servants, and hands, has entered upon said land, have a shaft sunk upon said forty acres of land into said *mind*, and has dug up and lifted out several thousand dollars worth of said ore; they have dug a tunnel upon other parts of the land above described, and have taken much valuable ore from the same. Your orator cannot state positively that said tunnel enters into the said eighty acres first above described, but your orator is of opinion it does.

Your orator charges that he is advised and believes that the said eighty acres first above described contains large quantities of copper ore and timbers, that the said defendants have entered upon the whole, committing irreparable waste to the freehold inheritance, as well to the eighty acres first above described as to the forty in which said shaft is sunk.

Your orator further shows to your honor that said defendants hold the same adversely to your orator, claims title adversely to *to* complainant, William P. Lea, as your orator believes, and so charges, under a forged deed. Your orator further states and shows to your honor that the said William Park Lea has commenced his action of ejectment in the Circuit Court of Polk County to recover the possession of said land, but the same will likely be attended with a tedious litigation, and that said Caldwell, Gray, Keith, and Mastin will continue by themselves, their agents, hands, *hirelands*, and servants to dec., cut timbers, and commit irreparable waste on said land to the freehold inheritance of said land, and to the entire destruction of the same, and your orator will be without adequate remedy unless they are enjoined by your honor's writ of injunction until said action of ejectment is determined at law. Your orator therefore prays an injunction, enjoining the said John Caldwell, James Gray, Alexander H. Keith, and John J. Mastin, either by themselves, agents, hands, hirelands, or servants, and all other persons, from digging ore, cutting timbers, or committing any other kind of waste upon the above described lands and every part thereof, until the final determination of the above named action of ejectment, and that upon same being determined in favor of your orator, the said William Park Lea, the said injunction be made perpetual. That subpœnas and copies of this bill and injunction be issued by the clerk and master of the Chancery Court at Cleveland, and made returnable to the proper term thereof, and be served upon each one of the said defendants. And your orator, as in duty bound, will forever pray.

WILLIAM PARK LEA.
TREWHITT & TREWHITT, and
GANT & GANT,
Solicitors for Comp'ts.

STATE OF TENNESSEE,
Bradley County.

This day personally appeared before me James Berry, Clerk and Master of the Chancery Court at Cleveland, John Hambright, attorney in fact for William Park Lea, the complainant named in the foregoing bill of complaint, and made oath in due form of law that the facts stated in the foregoing bill as of complainant's own knowledge are true, and those which are not stated as of complainant's own knowledge, but upon the information of others, he believes to be true.

JOHN HAMBRIGHT,
Attorney in fact.

Sworn to, and subscribed before me, this 7th day of September, 1853.

B. FRANK. STOUT, *D. C. & M.*

STATE OF TENNESSEE.

To the Clerk and Master of the Chancery Court at Cleveland, Bradley County, Tennessee, let subpœnas and copies of this bill issue, also writs of injunction upon the complainant's entering into injunction bond with good security, conditional that complainant shall well and truly satisfy all such costs and damages as may be hereafter recovered or decreed against him for wrongfully suing out said injunction: and also entering into bond with security for cost.

Given under my hand this 8th day of September, 1853.

THOMAS L. WILLIAMS, [SEAL.]
Chancellor.

The separate answer of James Gray to the bill of complaint filed in the Chancery Court at Cleveland by William Park Lea, through his attorney in fact, John Hambright against this respondent and others.

This respondent reserving all right and benefit of exception both to the form and substance of said bill for answer thereto, or so much thereof as he is advised it is material and necessary for him to respond, answering says, he came to Polk County, Tennessee, about the day of November, 1852, for the purpose of examining and purchasing some mineral properties in a part of that county known as Ducktown. A short time previous to respondent's arrival in Polk County, his co-defendants, Caldwell & Keith and one Thomas W. Mastin, who has since departed this life, had purchased, in connection with other lands, the two tracts of land described in complainant's bill, from one John Davis, and had taken a conveyance therefor. After their purchase from Davis they sunk a shaft upon said fraction of forty acres, and did some other work upon it, and discovered that the land contained valuable copper ore; and they lifted from the shaft a considerable quantity of copper ore. On the 20th day of May, 1853, this respondent in connection with other parties purchased from the vendees of Davis above named, the land upon which said shaft was sunk, including the fraction of forty acres. A portion of the tract of eighty acres, described in complainant's bill, and some other lands, making in all 160 acres, for which they were to have the sum of one hundred and fifty thousand dollars, on or before the 20th day of November, 1853. Respondent further states that at the time he purchased said property he knew nothing about any claim or pretended claim which complainant had to it; but respondent believed that his vendors had a good and perfect title to the land, and that their deed to him would communicate a valid and perfect title. Respondent therefore states that he is an innocent purchaser for a valuable consideration without notice, and in making

said purchase he did not intend to injure or defraud any one, but believed he was purchasing from the true owners, and still believes so. Respondent further answering states that he is informed and believes that on the 18th day of June, 1846, the complainant, William Park Lea, sold and conveyed the tract of eighty acres described in said bill, and another tract of eighty acres which includes the tract of forty acres described in said bill to *to* the said John Davis, executed and delivered to him a deed in fee simple for the same, and that said deed has been duly admitted to registration in Polk County.

Respondent is further informed and believes that said John Davis took possession of said tracts of land of eighty acres, and held continued adverse possession of the same until he sold and conveyed the lands described in the bill to Caldwell, Keith and Mastin, as above stated. And respondent is also informed and believes he held possession of the remaining forty acres until he disposed of the same by sale or otherwise. And respondent is further informed and believes that the parties to whom John Davis conveyed said land continued to hold adverse and peaceable possession of the same until their sale to this respondent, and until the commencement of the action of ejectment referred to in complainant's bill. Respondent is also informed and believes that said Wm. Park Lea held and claimed said land by virtue of a grant from the State of Tennessee. And this respondent, therefore, denies that he claims said lands under any forged deed whatever, according to the best of his knowledge, information and belief. Respondent denies that the complainant is the owner in fee of any portion of the lands described in said bill; he admits that there is a valuable copper mine on said land; he admits that his co-defendants have lifted a large amount of ore from said mine, worth, perhaps, several thousand dollars; and said is now lying exposed to the weather, and is subject to be greatly injured; and the same was just ready to be boxed and shipped for market when the injunction in this case was served upon the parties; in consequence of which respondent's co-defendants will sustain very great injury. Respondent admits that a tunnel has been entered upon said lands, and he believes it is either upon the forty or eighty acre tract, described in the bill. Respondent admits that the defendants have entered upon said land, and have been cutting timbers, taking up ore, &c.; but he denies that any waste has been committed, to the inheritance of which complainant has any cause to complain. It is true the defendants hold said land adversely to the complainant and all other persons. It is true an action of ejectment has been instituted in the Circuit Court of Polk County, as charged in said bill. And it is also true the defendants would have continued to work upon said land, and dispose of said ore, had it not been for the injunction in this cause. Respondent, therefore, prays that said injunction may be dissolved, and complainant's bill be dismissed. Respondent relies upon the statute of limitations, as the *the* same

was formally pleaded. He believes that the defendants have a legal and valid defence to the action of ejectment above named. He is informed and believes that the complainant actually sold and conveyed the lands described in said bill, and that this suit and the action of ejectment have been trumped up merely for the purpose of harassing this respondent and co-defendants for reason not necessary now to be stated; and he believes it has not been done by the complainant himself, but by other parties, who have procured the use of his name for such a fraudulent and wicked purpose; and respondent believes that such action was never thought of until copper ore was discovered upon the land. Respondent denies all fraud and combination with which he is charged, and, having fully answered, prays to be dismissed.

J. GRAY.
KEITH, *Sol'c't.*

STATE OF TENNESSEE,
Polk County.

Before the undersigned, an acting Justice of the Peace in and for the county aforesaid, personally appeared James Gray, the respondent in the foregoing answer, and made oath, in due form of law, that the facts stated in said answer, of his own knowledge, are true, and those stated from information he believes to be true.

J. GRAY.

Sworn to and subscribed before me, Nov. 9th, 1853.
JOHN CONNOR. [SEAL.]

The answer of John J. Mastin to the bill of complaint, filed in the name of William Park Lea, by his attorney in fact, John Hambright, against this respondent and others, in the Chancery Court, at Cleveland, Tennessee, this respondent, reserving all right and benefit of exceptions, both to the form and substance of complainant's bill, for answer thereto, or to so much thereof as he is advised it is necessary and proper for him to respond, answering, says: He has seen and examined the answer of his co-defendants, Calloway and Keith, to complainant's bill, and he believes the facts therein stated to be true, and adopts said answer as his own, and as a complete reply to all allegations of complainant's bill. This respondent knows nothing more in relation to the charges in said bill than is stated in the answer of his co-defendants; but this respondent, further answering said bill, will here state that he is the son of Thomas W. Mastin, referred to in the answer of his co-defendant, and for some time previous to the commencement of this litigation, had been residing in the State of Missouri, on terms of intimacy with the said William Park Lea, some time in the spring of 1853. And after the lands described in complainant's bill had been discovered to contain valuable copper ore, the said Lea came to East Tennessee on a visit; and on his return to Missouri, and some time in the month of May, 1853, as well as this respondent recollects, the said

Lea told respondent of the valuable copper mine which had been discovered upon the lands purchased from John Davis, and which are the same lands described in complainant's bill; and that he, Lea, had once owned said lands, but had sold them many years ago, and received for them what he considered their then worth. The said William Park Lea further told respondent that while he was in East Tennessee his friend, John Hambright, endeavored to persuade him that he had never sold said land, and by entering suit he might realize a fortune; but that he, Lea, told Hambright that he knew he had sold the land and made a deed for it, and received what it was thought to be worth at the time, and told Hambright he might go and examine the deed for himself; and he did so, and reported to Lea that he was fully satisfied that the deed had been made by himself. This conversation occurred during the lifetime of respondent's father, and at a time when respondent knew little or nothing of his father's affairs in Ducktown. Some time afterwards respondent was called home by the sickness and death of his father; and shortly after that event, greatly to the surprise of respondent, an action of ejectment was commenced in the Circuit Court of Polk County, as charged in complainant's bill, and this bill was thereupon filed to stop the work that was going on upon the property. Respondent was very curious to know how the said Lea could make a statement sufficient to obtain an injunction after what he had told this respondent, as above stated; but the mystery was all explained when he saw the loose and indefinite manner in which the bill was drawn, and that it was sworn to by the aforesaid John Hambright.

Respondent relies upon all the legal defences set up by his co-defendants, and, having fully answered said bill, prays that the injunction may be dissolved, and he hence discharged with his costs.

KEITH, *Sol'c't.*

STATE OF TENNESSEE,
McMinn County.

Before the undersigned, an acting Justice of the Peace in and for the county aforesaid, personally appeared John J. Mastin, the respondent in the foregoing answer, and made oath, in due form of law, that the facts therein stated, as of his own knowledge, are true, and those stated as from information of others he believes to be true.

JOHN J. MASTIN.

Sworn to and subscribed before me, November 23d, 1853.

WM. H. BALLEN, *Justice of the Peace.*

The joint and several Answer of John Caldwell and Alexander H. Keith to the Bill filed against them and others in the Chancery Court at Cleveland, Tennessee, by John Hambright, as Attorney in fact for William Park Lea.

These respondents, reserving all right and benefit of exception both to the form and substance of said bill, for answer thereto, or so much

thereof as they are advised it is material and necessary for them to respond, answering say: It is not true, as respondents are informed and believe, that complainant, William Park Lea, is the owner or has an estate in fee simple or any interest whatever in the two tracts of land described in complainant's said bill; on the contrary, respondents are informed and believe that on the 11th day of June, 1846, the said William Park Lea sold and conveyed said two pieces of land, together with forty acres adjoining (the 40 acre tract described in the bill), to one John Davis, at that time a citizen of Polk County, Tennessee, and owning and residing upon the lands adjoining the tracts described in the bill; and respondents are informed and believe that the said John Davis took possession of the lands shortly after or about the time of the execution of the conveyance by Lea, and continued to possess and exercise acts of ownership over the same until he sold and conveyed the same, as will hereafter be shown.

Respondents further state that said lands lie in a section of country known as Ducktown, and they are informed and believe that the said William Park Lea has stated in the presence of divers persons that he had sold and disposed of every foot of land he had in Ducktown; and respondents are also informed and believe that the said William Park Lea, before the filing of said bill, and after these respondents had been the owners of said land and had discovered valuable copper ore to exist in the same, stated to several persons that some of his friends in East Tennessee wanted him to set up a title or claim to said land, but that he would not do it because he made an honest sale of them, and had received as much for them as they were thought or supposed to be worth at the time he sold them.

Respondents further state that on the day of , 1852, the said John Davis sold and conveyed to them and to one Thomas W. Mastin, now deceased, his plantation in Ducktown, containing about acres, and including the two pieces of land described in complainant's bill, and gave to them a warranty deed for the same, as will more fully appear from a copy of the deed for the same, *as will more* hereto appended, and made a part of this answer, and is marked Exhibit A. At the time of said purchase the said John Davis had not all of his title papers registered; he had in his possession the grant from the State of Tennessee to William Park Lea, the complainant, for the two eighty acre fractions, one of which was the eighty acres described in said bill, and the other includes the forty acres therein described; and he also had in his possession a deed purporting to be executed, and which was really executed, as respondents are informed and believe, by the said William Park Lea, for the two eighty acre pieces of land, and said deed was attested by Elias Davis and Young Davis. All these papers were given over to these respondents by the said John Davis, as well as others relating to the title of said lands; and the deed from Lea never having been registered, respondent Caldwell took the same to Bradley County and had it proven before the clerk of the county court of said county by

Young Davis, one of said attesting witnesses, who was then on his way to some of the Western States, and the deed was then handed over to Elias Davis, the other subscribing witness, for the purpose of making the probate complete, and he took the same to the clerk of the county court of Polk County, and having made probate of it in due form, it was regularly admitted to registration in Polk County, on the day of February, 1853; all of which will appear more fully by reference to a certified copy of said deed hereto annexed, marked B, and asked to be taken as a part of this answer.

Respondents further state that by the terms of this contract with John Davis it was made the duty of the said Elias Davis to have all of the title papers relating to the land purchased from John Davis registered, and to pay the fees of registration, and the said Elias Davis executed a bond binding himself to perform that duty. This arrangement was made because the said John Davis was anxious to remove immediately to the West, and did not wish to be detained; and the said John Davis paid Elias $10 to pay the fees or registration, &c. After said deed from William Park Lea had been registered as above stated, the said Elias Davis lifted it from the office and retained possession of it, together with various other title papers belonging to these respondents. These respondents, believing that their title to said land was clear and undisputed, neglected for some time to call upon Elias Davis for the papers; but when they did so, he refused to give them up, on account of some difficulties which had arisen between him and these respondents in relation to a tract of land which he had given these respondents the privilege of exploring and testing. Respondents believe it is at the instance and by the procurement of the complainant, or those who have obtained the use of his name to carry on the litigation, that said deed is withheld; and respondents believe it is done for the purpose of endeavoring to obtain some advantage in the action of ejectment referred to in said bill. Respondents have never been able to see said deed since it was registered; and, should it become necessary, they will ask leave to file a cross bill to compel the complainant and the said Elias Davis to produce the deed in Court, that all parties may have the privilege of inspecting and examining it. Respondents took possession of the lands described in complainant's bill, and of other adjoining lands, immediately after the purchase from John Davis, as aforesaid, and have continued in possession of the same up to the present time; and shortly after their purchase they sunk a shaft upon the tract of forty acres described in the bill, and discovered a rich and valuable vein of copper ore upon it. Respondents lifted from said shaft about sixty tons of ore, and did some other work preparatory to developing the mine fully; and on the day of May, 1853, they sold to their co-defendant, James Gray, and his associates, 160 acres of land, including said shaft, and embracing a part or nearly all of the two tracts of land described in complainant's bill, for the sum of one hundred and fifty thousand dollars, reserving the ore which had been

lifted, and an additional quantity to be raised from the mine. Said ore, which had been lifted as above stated, is now lying on the hill, exposed to the weather, and is subject to be greatly injured; and respondents had begun to make preparations for boxing it and putting it in market, and had boxed a part of it, at the time they were enjoined by the order in this case. Said ore would now command a high price in the Northern markets, and it is desirable that it should be sold at once; it is very valuable, as stated in the bill, and is worth several thousand dollars. It is true, respondents have entered upon said land, claimed them adversely, and have been using them as their own, cutting timber, digging ore, &c.; and it is true they have driven a level into said lands, as charged, and they believe that both the tract of forty acres and that of eighty acres contain valuable copper ore, but they deny that they are committing any waste of which complainant has any right to complain; they deny that they claim title to said lands under a forged deed, according to the best of their information and belief; this is a matter not within their personal knowledge, and they can only speak from information and belief, but it is a matter within the knowledge of the said William Park Lea, and it is enough to excite the suspicion of any intelligent Court that said bill is not verified by the oath of the said Lea, but by an individual who does not profess to have any personal knowledge of the fact.

It will also be perceived that the manner in which the charge of forgery is made is very loose and indefinite, and the whole bill upon its face shows the fraudulent purpose for which it was drawn. Respondents admit that the institution and pendency of the action of ejectment as charged, and it may be that it will be attended with tedious litigation, but respondents deny that they are doing any injury to said land to which complainant has any right to object.

As far as the respondents know and believe, no adverse claim was ever set up to the land described in complainant's bill until after the valuable minerals had been discovered upon it. And they are constrained to believe that the pretended claim of complainant would have never been heard of had it not been for that discovery. And this suit is now trumped up for the purpose of harassing these respondents and preventing them from deriving that benefit from their discovery which it is their right and privilege to enjoy.

Respondents deny all fraud and combination which is charged or insinuated against them. And having fully answered, pray that said injunction be dissolved, and they be hence dismissed with their costs.

Respondents state that the said John Davis and those claiming under him, have had the continued, uninterrupted, peaceable and adverse possession of the lands described in complainant's bill, claiming and holding them under regular deeds purporting to convey an estate in fee simple for more than seven years before the filing of this bill, or the commencement of the action of ejectment, and they, therefore, rely upon the statute of limitations.

KEITH, *Sol'ct.*

Young Davis, one of said attesting witnesses, who was then on his way to some of the Western States, and the deed was then handed over to Elias Davis, the other subscribing witness, for the purpose of making the probate complete, and he took the same to the clerk of the county court of Polk County, and having made probate of it in due form, it was regularly admitted to registration in Polk County, on the day of February, 1853; all of which will appear more fully by reference to a certified copy of said deed hereto annexed, marked B, and asked to be taken as a part of this answer.

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lifted, and an additional quantity to be raised from the mine. Said ore, which had been lifted as above stated, is now lying on the hill, exposed to the weather, and is subject to be greatly injured; and respondents had begun to make preparations for boxing it and putting it in market, and had boxed a part of it, at the time they were enjoined by the order in this case. Said ore would now command a high price in the Northern markets, and it is desirable that it should be sold at once; it is very valuable, as stated in the bill, and is worth several thousand dollars. It is true, respondents have entered upon said land, claimed them adversely, and have been using them as their own, cutting timber, digging ore, &c.; and it is true they have driven a level into said lands, as charged, and they believe that both the tract of forty acres and that of eighty acres contain valuable copper ore, but they deny that they are committing any waste of which complainant has any right to complain; they deny that they claim title to said lands under a forged deed, according to the best of their information and belief; this is a matter not within their personal knowledge, and they can only speak from information and belief, but it is a matter within the knowledge of the said William Park Lea, and it is enough to excite the suspicion of any intelligent Court that said bill is not verified by the oath of the said Lea, but by an individual who does not profess to have any personal knowledge of the fact.

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As far as the respondents know and believe, no adverse claim was ever set up to the land described in complainant's bill until after the valuable minerals had been discovered upon it. And they are constrained to believe that the pretended claim of complainant would have never been heard of had it not been for that discovery. And this suit is now trumped up for the purpose of harassing these respondents and preventing them from deriving that benefit from their discovery which it is their right and privilege to enjoy.

Respondents deny all fraud and combination which is charged or insinuated against them. And having fully answered, pray that said injunction be dissolved, and they be hence dismissed with their costs.

Respondents state that the said John Davis and those claiming under him, have had the continued, uninterrupted, peaceable and adverse possession of the lands described in complainant's bill, claiming and holding them under regular deeds purporting to convey an estate in fee simple for more than seven years before the filing of this bill, or the commencement of the action of ejectment, and they, therefore, rely upon the statute of limitations.

KEITH, *Sol'ct.*

STATE OF TENNESSEE,
McMinn County.

Before the undersigned, an acting justice of the peace, for the county aforesaid, personally appeared John Caldwell and Alexander H. Keith the respondents in the foregoing answer, and made oath in due form of law, that the facts therein stated of their own knowledge are true. And those stated from information they believe to be true.

JOHN CALDWELL,
A. H. KEITH.

Sworn to and subscribed before me, November 23d, 1853:

WM. H. BALLEN,
Justice of the Peace.

WILLIAM PARK LEA
vs.
JOHN CALDWELL, ALEXANDER KEITH, JOHN MARTIN, & JAMES GRAY.

The complainant, by his solicitor, comes, and for replication to the several answers of the defendants, say, that he ought not to be barred or precluded from having his injunction, and the same made perpetual in manner and form as complained of and prayed for in his original bill, because he says that the several matters and things in said bill complained of and set forth in said bill, and the several matters and things answered and set up in bar is untrue; and therefore complainant prays as in and by his original bill he hath already prayed.

TREWHITT,
Solicitor for Complainant.

Know all men by these presents, that I, William Park Lea, of the County of Jackson and State of Missouri, have this day made, constituted, and appointed, and by these presents do hereby make, constitute, and appoint John Hambright, of the County of McMinn, and State of Tennessee, my true and lawful attorney for me, and in my name, to sell and dispose of by quit-claim the following tracts or parcels of land, or any part thereof in the County of Polk, and State last aforesaid, to wit, the east half of the southwest quarter of section fifteen, in fractional township four south, and range five east of the basis line in the Ocoee District. Also the east half of the northwest quarter of section twenty-two in same township and range, containing by estimation one hundred and sixty acres for such price or sum of money, and to such person or persons as he shall think fit and convenient, and also for me, and in my name, and as my act and deed to sign, seal, execute, acknowledge, and deliver such deed or deeds and conveyance or conveyances, for the sale and disposal thereof, or any part thereof, with such clause or clauses, covenant or covenants, and agreement or agreements to be therein contained, as my said attorney shall think fit and expedient, hereby ratifying and confirming all such deeds, conveyances, bargains, and sales which

shall at any time hereafter be made by my said attorney, touching or concerning the premises.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal this 29th day of July, A. D. 1853.

WILLIAM P. LEA. [SEAL.]

Witness,
J. W. BENTON,
W. CLAUDE JONES.

STATE OF MISSOURI,
County of Jackson.

On this the fifteenth day of September, A. D. one thousand eight hundred and fifty-three, personally appeared before me, Henderson Young, the Judge of the Circuit Court, within and for the sixth judicial circuit for the State of Missouri, William Park Lea, who is personally known to me to be the same person whose name is subscribed to the foregoing power of attorney, who acknowledged that he executed the same for the uses and purposes therein mentioned.

Given under my hand and seal the day and year last above written.

H. YOUNG. [SEAL.]

STATE OF MISSOURI,
Jackson County, ss.

I, Sam'l D. Lucas, Clerk of the Circuit Court within and for the county aforesaid, do certify that the Honorable Henderson Young, before whom the foregoing acknowledgment was made, and who has thereunto subscribed his name, was at the time of so doing the same, the sole and presiding Judge of said Circuit Court, duly commissioned and qualified, that his said certificate is in due form of law, and that his signature thereto is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office in Independence, this 15th day of September, A. D. 1853.

SAM'L D. LUCAS, *Clerk.*
By O. P. W. BAILEY, *D. C.*

[SEAL. Missouri, Jackson County Circuit Court.]

STATE OF TENNESSEE,
Polk County.

April 22d, 1854, 3 o'clock P. M. Then was the foregoing power of attorney, together with the judge's and clerk's certificate, noted in Note Book A, page 125, registered in my office, in Benton, in Book E, page 228, 229.

ROBT. N. FLEMING, *Register.*

STATE OF TENNESSEE,
Bradley County.

I, James Berry, Clerk and Master of the Chancery Court at Cleveland, Bradley County, Tennessee, do hereby certify that the

foregoing is a true copy of the bill, answers, replication, and power of attorney, filed in the case of William Park Lea against John Caldwell, James Gray, Alexander H. Keith, and John J. Mastin in said Chancery Court.

In testimony whereof, I have hereunto set my hand and affixed my private seal, having no seal of office at office in Cleveland, this 14th day of December, A. D. 1854.

JAMES BERRY, *C. M.* [SEAL.]
By B. FRANK. STOUT, *D. C. & M.*

Exhibit A. Referred to in answers as p'r transcript from Cleveland.

"Know all men by these presents that I, Elias Davis, of the County of Polk and State of Tennessee, am held and firmly bound unto Samuel Congdon, of the county and State aforesaid, in the penal sum of twenty thousand dollars, to be levied of my goods and chattels, lands and tenements.

Given under my hand and seal this eleventh day of June, one thousand eight hundred and fifty-three.

The condition of the above obligation is such that if the said Davis shall make, or cause to be made, good and sufficient titles executed by John Davis, of Montgomery County, Arkansas, to the said Congdon to the following described land situate in the County of Polk and State of Tennessee: Range five east of the basis line, fractional township four south, Ocoee District, it being the northeastern part of the southwestern quarter of section fifteen, beginning at a white oak tree near Davis' Mill Creek, running thence with a marked line crossing a ridge to a black-oak tree and post-oak on Patrick Nash's line, thence north 20° east to the corner of said forty, thence with the Waterhouse and the lands and lines of Nelson Carter to the beginning, containing forty acres, more or less, excepting one acre of said lot of land embracing the present meeting-house or school-house for the use of the citizens of the township aforesaid; then and in that case the above obligation shall be null and void, otherwise to remain in full force and effect. The above to be complied with in four months.

ELIAS DAVIS. [SEAL.]

Signed, sealed, and delivered the 11th day of June, 1853, in the presence of

W. J. HARBIN,
J. T. NEWBERG.

STATE OF TENNESSEE,
Polk County.

Personally appeared before me, Emmons P. Douglass, Clerk of the County Court for said, Elias Davis, the above named bargainer, with whom I am personally acquainted, and who acknowledged the due execution of the foregoing title bond to be his act and deed, and for the purposes therein contained.

Witness my hand at office in Benton, June 11th, 1853.

E. P. DOUGLASS, *Clerk.*

STATE OF TENNESSEE,
Polk County.

June 13th, 1853, 8 o'clock A. M. Then was the foregoing bond for title, together with the clerk's certificate, noted in Note Book A, page 108, registered in my office in Benton in Book D, pages 323-4. ROB'T N. FLEMING,

Register's fee, $ 75. *Register.*

STATE OF TENNESSEE,
Polk County.

I, Rob't A. Fleming, Register in and for the county and State aforesaid, hereby certify that the foregoing is a true and correct copy of the title bond named therein, and of the clerk's and register's certificates thereto, as remaining of record in my office.

Given under my hand at office in Benton, this 22d day of September, 1856. ROB'T N. FLEMING,

Register's fee, $ 87½ *Register.*

(*Copy.*)

(Which is referred to as Exhibit *B* to answers in transcript of record from Cleveland.)

STATE OF TENNESSEE,
Bradley County.

This indenture, made this the 18th day of June, in the year of our Lord one thousand eight hundred and forty-six, between William P. Lea of the County of Bradley and State of Tennessee, of the one part, and John Davis, of the County of Polk and State of Tennessee, of the other part,

Witnesseth, that the said William P. Lea, for and in consideration of the sum of fifty dollars to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed, and confirmed, and by these doth grant, bargain, sell, alien, convey, and confirm unto the said John Davis and his assigns forever, certain tracts or parcels of land described on the general plan of the Ocoee District, as containing one hundred and sixty acres of land, more or less, and also as being the east half of the southwest quarter of section fifteen, in fractional township four south, and range five east, and also the east half of the northwest quarter of section twenty-two, in the same range and township, and all and singular the appurtenances thereto belonging, or in any wise appertaining to the said John Davis, his heirs, and assigns. I further covenant and bind myself, heirs, and representatives to warrant and forever defend the title to said lands against the lawful claims of all persons whatsoever.

Witness my hand and seal this the 18th day of June, 1846.

WILLIAM P. LEA. [SEAL.]

Witness: ELIAS DAVIS,
YOUNG DAVIS, sworn to.

STATE OF TENNESSEE,
Bradley County.

Personally appeared before me, John H. Robertson, Clerk of the County Court for the County of Bradley aforesaid, Young Davis, one of the within named witness, who, after being duly sworn, depose and say he is acquainted with William P. Lea, the bargainer named in the foregoing deed, who in his presence acknowledged the execution of the same on the day it bears date for the purposes therein mentioned.

Witness my hand at office, December 17th, 1852.

JOHN H. ROBERTSON, *C'lk.*

STATE OF TENNESSEE,
Polk County.

Personally appeared before me, Emmons P. Douglass, Clerk of the County Court for Polk County, Elias Davis, one of the subscribing witnesses to the within deed of conveyance, who, after being duly sworn by me, deposes and says he was acquainted with William P. Lea, the bargainer, that he acknowledged the due execution of the same to be his act and deed, and for the purposes therein contained.

Witness my hand at office *office* in Benton, January 28th, 1853.

E. P. DOUGLASS, *Clerk.*

STATE OF TENNESSEE,
Polk County.

Jan'y 28th, 1853, 12 o'clock M. Then was the foregoing deed of conveyance, together with the clerk's certificate, and noted in Note-Book A, page 102, registered in my office in Benton, in Book D, pages 222, 223.

ROB'T A. FLEMING,
Register.

Reg. fee, $1 00

Know all men by these presents that we, John Caldwell, Alexander H. Keith, John J. Mastin and James Gray and John B. Mastin, M. S. Philips, C. L. King, S. P. Wells, O. P. Hall, P. H. Keith, A. D. Keys, Wm. P. H. McDearmott and T. L. Koyle, are held and firmly bound to Wm. Park Lea, by his attorney in fact, John Hambright, in the penal sum of eight thousand dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs and representatives firmly by these presents, signed with our names and sealed with our seals this 3d day of Jan'y, 1854.

The condition of this obligation is such that whereas on the 7th day of Sept., 1853, a bill was filed in the Chancery Court at Cleveland by W. P. Lea, by his attorney in fact, John Hambright, against the said John Caldwell, Alex. H. Keith, John J. Mastin and James Gray, and an injunction was issued enjoying the defendants from mining or working upon the lands described in the bill, and from re-

moving copper ore, those minerals from said land and disposing of the land, and whereas the chancellor has given this order, directing the clerk and master of said court to dissolve said injunction and allow said defendants to proceed with their operations on said land and to remove and dispose of said ore and mineral on the proper bond *bond* and security being given: Now, therefore, if said defendants shall well and truly pay and satisfy all damages which the complainant aforesaid may recover or sustain in consequence of the dissolution of said injunction, and shall abide by and perform whatever decree may be rendered by said Chancery Court in the premises, then this obligation to be void, otherwise to remain in full force and virtue.

P. H. KEITH, [SEAL.]
By W. F. KEITH, *Attor.*
A. D. KEYS, [SEAL.]
By W. F. KEITH, *Attor'y.*
WM. P. H. McDERMOTT, [SEAL.]
By W. F. KEITH, *Attor'y.*
T. L. HOYL, [SEAL.]
By W. F. KEITH, *Attor'y.*
JOHN CALDWELL, [SEAL.]
By W. F. KEITH, *Attor.*
ALEX H. KEITH, [SEAL.]
By W. F. KEITH, *Attor.*
JOHN J. MASTIN, [SEAL.]
By W. F. KEITH, *Attor.*
JAMES GRAY, [SEAL.]
By W. F. KEITH, *Attor.*
JOHN B. MASTIN, [SEAL.]
By W. F. KEITH, *Attor.*
M. S. PHILIPS, [SEAL.]
By W. F. KEITH, *Attor.*
C. L. RING, [SEAL.]
By W. F. KEITH, *Attor.*
T. C. WELLS, [SEAL.]
By W. F. KEITH, *Attor.*
O. P. HALL, [SEAL.]
By W. F. KEITH, *Attor.*

Witness,
JAMES BERRY, *C. and M.*

Whereas an original and injunction bill was filed in the Chancery Court at Cleveland, Tennessee, by Wm. Park Lea, by his attorney in fact, J. Hambright, against John Caldwell, James Gray, Alex. H. Keith, J. J. Mastin, and an injunction was ordered to be issued enjoining said defendants from further operations in the lands described in the bill, and from removing the ore that had been raised by them on said land, and whereas the Hon. Thos. S. Williams, Chancellor, has made an order directing that the clerk and master of the Chan-

cery Court at Cleveland, shall issue his order dissolving said injunction on the defendants entering into land with security in the names prescribed by law. Therefore be it known that we, John B. Maston, M. P. Philips, C. S. King, T. P. Wells, O. P. Hale, P. H. Keith, A. D. Keys, M. P. H. McDermott, T. L. Hoyl, do hereby nominate, constitute and appoint W. F. Keith our special agent and attorney in fact, to sign our names as securities to such bond or bonds as said clerk and master may require to be given by said defendants for dissolving of the injunction on aforesaid. Hereby fully ratify and *comformg* the acts of our said agent and attorney in the premises, witness our hands and seals, December 28th, 1853.

P. H. KEITH, [SEAL.]
A. D. KEYS, [SEAL.]
WM. P. H. McDERMOTT, [SEAL.]
T. L. HOYL, [SEAL.]
JOHN. B. MASTIN, [SEAL.]
M. L. PHILIPS, [SEAL.]
C. L. KING, [SEAL.]
T. W. WELLS, [SEAL.]
O. P. HALL, [SEAL.]

WM. PARK LEA
vs.
JOHN CALDWELL, ALEX. H. KEITH *et als.*

Be it remembered, that on this 29 day of August, 1854, the Hon. Seth J. W. Luckey, chancellor, presiding, came the compla'nt by his solicitor, J. C. Gant, and filed the within order dismissing this cause, which is in the words and figures following, to wit:—

WM. P. LEA
vs.
JOHN CALDWELL, ALEX. H. KEITH *et als.*

The complainant by his attorney in fact, J. Hambright, dismissed this suit now pending in the Chancery Court at Cleveland, Tennessee, this 21st day of April, 1854. WM. PARK LEA,
By Attor. J. HAMBRIGHT.

It is therefore ordered and decreed by the court that said suit be dismissed according to said written order, and that the complainant Wm. Park Lea and John Hambright his security for the prosecution of this suit, pay all the costs in this cause for which an execution may issue.

STATE OF TENNESSEE.

I, William Hunt, clerk and master of the Chancery Court, Cleveland, Tennessee, do hereby certify that the foregoing pages contain perfect, true and full transcript of all the proceedings in the case of William Park Lea, vs. John Caldwell, James Gray, Alexander H. Keith and John J. Mastin, now on file in my office. Given under

my hand and private seal, there being no seal of the court at Cleveland.

[L. S.] Tennessee, this 3d day of April, 1857.

WILLIAM HART, [SEAL.]
Clerk and Master.

No. 2.

Depo. of Barclay McGee for D'f'ts. March, 22, 1856.

Barclay McGee, aged about 32 years, a witness on behalf of respondents in this cause, and the said Barclay McGee, being duly sworn on the Holy Evangelists of Almighty God, deposeth and saith as follows:—

Question by J. P. Cooke, sol. for resp'ts. Please state if you have in your possession any original grants issued by the State of Tennessee to William P. Lea, for lands in the Ocoee District; if so, state how many; the date of said grants, and the amount and description of the land they embrace.

Answer. I have in my possession eight grants for lands in the Ocoee District, to William P. Lea. They are dated as follows: No. 6216 for 160 acres, is dated 7 Dec'r, 1842. No. 6218 for 160 acres, is dated Dec'r 7, 1842. 6217 for 160 acres, is of same date. No. 6219 for 160 acres, is of same date. No. 6215 for 160 acres, same date. No. 5764 for 40 acres, dated 21 August, 1842. No. 6260 for 280 acres, is dated 8th Dec'r, 1842. No. 6258 for 160 acres, is dated 8th Dec'r, 1842. All said grants *all said grants* are founded on entries made 15th April, 1842.

2d by same. Please state how long you have had said grants in your possession, and how you came by the possession of them.

Answer. They have been in my possession ever since the death of my father John McGhee, who died in July, 1851. They were in possession of my father at his death, and I took possession of them as executor.

3d by same. Please state if said grants are in the same condition they were when they came into your possession, and whether or not there has been any change or alteration upon the face of any of said grants since they came to your possession, or whether they are in the same condition now that they were when you first obtained possession of them.

Answer. They are just as they were when I first saw them. There has no change been made in any of them.

4th by same. State if you know when and by what means and from whom your father, John McGhee, obtained possession of said grants.

Answer. My father obtained possession of said grants from Caswell Lea, in the purchase of the Savannah farm, the grants being for mountain lands adjoining. I cannot positively state when he

made the purchase; but suppose about the year 1849, or perhaps in 1850.

5th by same. Please state if there are any alterations or erasures apparent upon the face of any of said grants; if so, please state which ones, and what alterations have been made, if any.

Answer. There are alterations and erasures in three of the grants, viz., No. 6258, 6260, and 5764. The two first named were originally filled up to William Park Lea, with the name William Park Lea written in full, and altered by erasing or scratching out the letters "ark," leaving William P. Lea. No. 5764 was originally Wm. Park Lea, and that has been altered by scratching out the word "Park" and inserting "P," so that it now stands Wm. P. Lea.

6th by same. You will please exhibit all of said grants, and append them to this, your deposition.

Answer. I have exhibited said grants to this my deposition, marked No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8.

Further this deponent saith not. B. McGHEE.

Abstract of Exhibits. Exhibits to Barclay McGhee's Dep'n.

Ex. No. 1.	Grant No.	6258,	on	Entry No.	6996,	15	Ap'l,	'42,	to	William P	(erased)	Lea.	On Back—	"Grant	6258,	Wm. P	(erased)	Lea,	160 A."
" " 2.	"	6260,	"		6984, and	6997	"			"		"		"	"	"	6260,	"	"	" 280 A."
* " 3.	"	5764,	"		6983,	"	"	"		"	*	"		"	"	"	5764,	P	(*not* erased)	Lea, 40 A."
" " 4.	"	6215,	"		6993,	"	"	"		William P. Lea		"		"	"	"	6215,	"	Wm. P.	Lea, 160 A." (no erasure.)
" " 5.	"	6219,	"		6991,	"	"	"		"	"	"		"	"	"	6219,	"	"	" 160 A." (no erasure.)
" " 6.	"	6217,	"		6995,	"	"	"		"	"	"		"	"	"	6217,	"	"	" 160 A." (no erasure.)
" " 7.	"	6218,	"		6992,	"	"	"		"	"	"		"	"	"	6218,	"	"	" 160 A." (no erasure.)
" " 8.	"	6216,	"		6994,	"	"	"		"	"	"		"	"	"	6216,	"	"	" 160 A." (no erasure.)

* Exhibits Nos. 1 and 2 have the "ark" *erased*, face and back, whenever the name of the grantee appears: Ex. No. 3 shows the name of the grantee as written *on the face;* first, as William Park Lea in full, with the "ark" erased with a knife; second, as Wm. Park Lea (abbreviated), and then the "Park" *all* erased with a knife, and the "P" *re-written* over the middle of the space left by the Park, thus: Wm. P. Lea; all done with same pen and ink, at same time, by same hand; when the name occurs the third and fourth times in the face, the "ark" is simply erased; ☞ but *on the back* of this grant, *no mistake was made*, and no *erasure* was needed, it being thus rendered evident that the error in this name was discovered and corrected before this grant was *backed*.

Copy.

Exhibit No. 1, *to B. McGee's depo.*

Grant No. 6258.

THE STATE OF TENNESSEE.

To all to whom these presents shall come greeting:—

Know ye, that in consideration of an entry made in the Entry Taker's office of the Ocoee District, of No. 6926, dated the fifteenth day of April, 1842, by William P. Lea as general enterer. There is granted by the same State of Tennessee, to the same William P. Lea, and his heirs, a certain tract or parcel of land, containing one hundred and sixty acres, lying in the county of Polk, in the said District, situated in the third range east of the basis line, first township and sixth section, being the southeast quarter of said section; beginning at the northwest corner of said quarter, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said William P. Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 8th day of December, in the year of our Lord one thousand eight and forty-two, and of American Independence the sixty-seventh.

By the Governor, JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

William P. Lea hath title to the above described land.

J. C. TIPTON, *Register of the Ocoee District.*

Exhibit No. 2 *to B. McGhee's Depo.*

THE STATE OF TENNESSEE. No. 6260.

To all to whom these presents shall come greeting: Know ye, that in consideration of two entries made in the Entry Taker's Office of the Ocoee District, of No. 6984 and 6997, dated the fifteenth day of April, 1842, by William P. Lea as general enterer. There is granted by the said State of Tennessee, to the said William P. Lea and his heirs, a certain tract or parcel of land containing two hundred and eighty acres, lying in the county of Polk, in the said district, situate in the third range east of the basis line second fractional township north, and 29th and 33d sections, being the remainder of the southeast quarter of the 29th and the northwest quarter of the 33d section: beginning at the northeast corner of the said first mentioned quarter, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said William P. Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 8th day of December, in

the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the Governor, JAMES C. JONES.
JNO. S. YOUNG, *Secretary.*

William P. Lea hath title to the above described land.
J. C. TIPTON, *Register of the Ocoee District.*

Exhibit No. 3 to B. McGee's Depo.

THE STATE OF TENNESSEE. No. 5764.

To all to whom these presents come greeting: Know ye, that in consideration of an entry made in the Entry Taker's Office of the Ocoee District, of No. 6983, dated the fifteenth day of April, 1842, by William P. Lea as general enterer. There is granted by the said State of Tennessee to the said Wm. P. Lea and his heirs, a certain tract or parcel of land containing forty acres, lying in the County of Polk, in the said District, situate in the third range east of the basis line, second fractional township north, and twenty-eighth section, being the southwest corner of the southwest quarter of said section: beginning at the southwest corner of said quarter, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said William P. Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 21st day of August in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the Governor, JAMES C. JONES.
JNO. S. YOUNG, *Secretary.*

William P. Lea hath title to the above described land.
J. C. TIPTON, *Register of the Ocoee District.*

Exhibit No. 4 to Barclay McGhee's Depo.

"THE STATE OF TENNESSEE. No. 6215.

To all to whom these presents shall come greeting: Know ye, that in consideration of an entry made in the Entry Taker's Office of the Ocoee District, of No. 6993, dated the fifteenth day of April, 1842, by William P. Lea as general enterer. There is granted by the said State of Tennessee to the said William P. Lea and his heirs, a certain tract or parcel of land containing one hundred and sixty acres, lying in the County of Polk in the said District, situate in the third range east of the basis line, first township, and eighth section, being the northwest quarter of said section: beginning at the northwest corner of said quarter, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said William P. Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of

the State to be affixed at Nashville, on the 7th day of December, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the Governor, JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

William P. Lea hath title to the above described land.

J. C. TIPTON, *Register of the Ocoee District.*

Exhibit No. 5 to Barclay McGhee's Depo.

"THE STATE OF TENNESSEE. No. 6219.

To all to whom these presents shall come greeting: Know ye, that in consideration of an entry made in the Entry Taker's Office of the Ocoee District, of No. 6991, dated the fifteenth day of April, 1842, by William P. Lea as general enterer. There is granted by the said State of Tennessee to the said William P. Lea and his heirs, a certain tract or parcel of land containing one hundred and sixty acres, lying in the County of Polk in the said District, situate in the third range east of the basis line, second fractional township north, and thirty-first section, being the northeast quarter of said section: beginning at the northeast corner of said quarter, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said William P. Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand, and caused the great seal of the State to be affixed, at Nashville, on the 7th day of December, in the year of our Lord one thousand eight hundred and forty-two, and of American independence the sixty-seventh.

By the Governor, JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

William P. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Exhibit No. 6 to Barclay McGhee's Depo.

No. 6217.

THE STATE OF TENNESSEE.

To all to whom these presents shall come, greeting:—

Know ye, that in consideration of an entry made in the Entry Taker's Office of the Ocoee District, of No. 6995, dated the fifteenth day of April, 1842, by William P. Lea, as general enterer, there is granted by the said State of Tennessee to the said William P. Lea and his heirs a certain tract or parcel of land, containing one hundred and sixty acres, lying in the county of Polk, in the said district, situate in the third range east of the basis line, first township and fifth section, being the southwest quarter of said section, beginning at the northwest corner of said quarter, with its appurtenances, to have and

to hold the said tract or parcel of land, with its appurtenances, to the said William P. Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand, and caused the great seal of the State to be affixed, at Nashville, on the 7th day of December, in the year of our Lord one thousand eight hundred and forty-two, and of American independence the sixty-seventh.

By the Governor, JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

William P. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Exhibit No. 7 *to Barclay McGhee's Depo.*

No. 6218.

THE STATE OF TENNESSEE.

To all to whom these presents shall come, greeting:—

Know ye, that in consideration of an entry made in the Entry Taker's Office of the Ocoee District, of No. 6992, dated the fifteenth day of April, 1842, by William P. Lea, as general enterer, there is granted by the said State of Tennessee to the said William P. Lea and his heirs a certain tract or parcel of land, containing one hundred and sixty acres, lying in the county of Polk, in the said district, situate in the third range east of the basis line, first township and sixth section, being the southwest quarter of said section, beginning at the northwest corner of said quarter, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said William P. Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand, and caused the great seal of the State to be affixed, at Nashville, on the 7th day of December, in the year of our Lord one thousand eight hundred and forty-two, and of American independence the sixty-seventh.

By the Governor, JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

William P. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Exhibit No. 8 *to Barclay McGhee's Depo.*

No. 6216.

THE STATE OF TENNESSEE.

To all to whom these presents shall come, greeting:—

Know ye, that in consideration of an entry made in the Entry Taker's Office of the Ocoee District, of No. 6994, dated the fifteenth day of April, 1842, by William P. Lea, as general enterer, there is

granted by the said State of Tennessee to the said William P. Lea and his heirs a certain tract or parcel of land, containing one hundred and sixty acres, lying in the county of Polk, in the said district, situate in the third range east of the basis line, first township and seventh section, being the northeast quarter of said section, beginning at the northwest corner of said quarter, with its appurtenances, to have and to hold the same tract or parcel of land, with its appurtenances, to the said William P. Lea and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand, and caused the great seal of the State to be affixed, at Nashville, on the 7th day of December, in the year of our Lord one thousand eight hundred and forty-two, and of American independence the sixty-seventh.

By the Governor, JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

William P. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Deposition of Jas. S. Bradford, for Resp'ts. Nov. 1855.

James S. Bradford, aged about 31 years, being duly sworn, deposes as follows:—

Question 1st by resp'ts' solicitor. Please state if you are register and entry taker of the Ocoee District; and if so, how long have you held that office?

Answer. I am register, but do not recollect exactly the time appointed; probably in the year 1851 or 1852, and have held office ever since.

Question 2d by same. State whether or not *since* you have held said office you have ever seen in the office a certified copy of entry No. 5446; and if so, state where and under what circumstances you saw said certified copy, whose name it was in, and what has become of it. State all you know about it.

Answer. I have since I have held said office seen a certified copy of entry No. 5446. I saw it while *while* William Park Lea was here attending to the suit between said Lea and some other part, I think in the year 1853. The circumstances under which I saw the certified copy was, hunting it up for William Park Lea. The name it was in was William P. or William Park Lea, I cannot say which. I that time put in a blank book or pocket book. Calloway remarked that he wished me to put it away and take particular care of it, so that it could be found without hunting through the papers; and I have either lost or mislaid it so that I have not been able to find it.

3d by same. State from the best recollection you have whether said certified copy was in the name of William P. Lea or William Park Lea.

Answer. I do not recollect. The most I recollect about it is the

shape of the "P;" as to the balance, I do not recollect. The P looked like it had all been made without lifting the pen.

4th by same. State if the blank book or pocket book in which you put said certified copy was one that you carried with you in your pocket.

Also state whether or not shortly after that time you went to the State of Virginia, and whether you carried with you said blank or pocket book with said certificate in it.

Answer. The blank book spoken of was one that I carried in my pocket. I went shortly afterwards to the State of Virginia, and carried the blank book or pocket book with me, but do not know whether the certificate was in it or not. If it was, I must have lost it that trip.

5th by same. State whether or not you ever placed said certified copy back in the office, after you put it in said book for the purpose of taking care of it.

Answer. I do not recollect of putting it back. I might have put it back and not recollect. I have no recollection of seeing it since I put in the book.

Cross-examination.

1st Quest. by pl't'ff's counsel. Please state when and by whom, and at what price each of the following q'r sections of land were entered, viz: The west half of the S. W. q'r of sec. 15, R. 5 E., fr. township 4 S., adjoining entry 5446 on the west; S. E. quarter of same section adjoining entry 5446 on the east; N. W. and N. E. quarters of same section; the west half of the N. W. q'r of sec. 22, and the east half of the S. W. q'r of sec. 22, all in same range and township.

Answer. F. W. Lea entered the west half of the southwest quarter of section 15, range five east, fr. township 4 south, as laid down on the map of the Ocoee District. It is marked as entered at one cent per acre, on the 19th of October, 1842.

The southeast quarter of section 15 is marked as entered by F. W. Lea at one cent per acre.

The northwest quarter of same section is marked as entered by Euclid Waterhouse at one cent per acre, on the 15th April, 1842.

The northeast quarter is marked as being entered by Waterhouse, in two entries, one at 12½ cents per acre, and the other at one cent per acre. The cent entry was made as marked on the 5th day of April, 1842, being one hundred and twenty acres, and the 12½ cent entry, being 40 acres, was made on the 17th day of December, 1841. The west half of the northwest quarter of section 22, is marked as entered by James Davis, at once cent per acre and on the Owing to the difficulty of finding the balance of the number and date of the *of the* question, further answer thereto is waived.

2 Quest. Please state when you last saw, if you ever did so, the location and certified copy of *of* entry No. 6115 covering the east

half of the N. W. q'r of sec. 22, range 5 E., fr. township 4 S., and are they now in your office?

Answer. I do not know whether I have seen it or not. Probably I have and probably not. I do not know whether it is in the office or not.

3 Quest. Please state whether you examined the map of the Ocoee District now in your office, upon which the names of enterers are written about the time this suit was commenced, or within a few months thereafter; and if so, state whether the name of "Wm. P. Lea" was not legible on the east half of the N. W. q'r of sec. 22, fr. township 4 S., R. 5 E.

Answer. Well, sir, if it was, I do not recollect. I have examined the map frequently, but do not recollect of ever seeing the name of Wm. P. Lea marked on the east half of said quarter of land above described.

4 Ques. Does said quarter sec. present the appearance at present of being much defaced and blotched?

Please describe the appearance of said q'r sec. on the map as near as you can.

Answer. Looks a little dirty, sir. As to the blotting, the Davis name looks very plain. That is about as well as I can describe it from the looks. It looks a little more dirty and greasy than some others around it.

5 Quest. In direct examination you speak of the certified copy of entry No. 5446. Please state whether you remember of ever showing that copy, before or after the time Col. Thomas H. Calloway requested you to take good care of it, to any one, particularly to Francis W. Lea.

Answer. I do not recollect whether I ever showed it to him or not. Probably before that, a short time, I had shown it to William Park Lea. I have no recollection of showing it to Francis W. Lea or any one else after I put it in the pocket book.

Tuesday morning, 8 o'clock, November 13th, 1855.

Cross-examination of James S. Bradford continued by complainant's counsel.

6 Quest. Please state as near as you can at what time of the year 1853 it was, when Thomas H. Calloway requested you to take good care of the certified copy of entry No. 5446.

Answer. It was in April or May, 1853, I think.

7th. Who were in your office at the time?

Answer. I think Park Lea and Thomas H. Calloway, and probably Levi Forewhitt, Esq., was there. I do not recollect of any other being there.

8th. Why did Thos. H. Calloway seem to take much interest in the preservation of said copy? Did he have any interest in the suit pending between Wm. Park Lea against Masten, Keith, Caldwell and others?

Answer. I do not know, sir.

9th. At what time in the year 1856 was it when you started on your trip to Virginia, about which you speak in direct examination?

Answer. It was in April, 1854, I think.

10th. Did A. M. Lea, as agent of the complainant, call at your office, in Cleveland, on or about the 25th of Nov., 1854, and ask for the certified copy of entry No. 5446, saying it was an office paper, and he had a right to see it; and, if so, what was your reply?

Answer. I think he called on me at some time, but cannot tell the date, for the certified copy of the entry above spoken of. I think in the year 1854, about the time or after the suit commenced, and I examined in my office for the same, but was unable to find it.

11. Do you not remember that you went with Francis W. Lea to Nashville while the examination of J. C. Tipton, in this cause, was going on at Cleveland, Tenn., in the first part of Dec., 1854; and, if so, can you not remember from this fact that A. M. Lea had made the request to see said copy shortly before that time?

Answer. I recollect of going with Mr. Lea to Nashville, but not the particular date—it was some time in the winter; and also recollect of being introduced to A. G. Welcker at Chattanooga, on my way to Nashville, but do not recollect any conversation had about the examination of J. C. Tipton. I think it was before that time that A. M. Lea requested to see the certified copy.

12th. Do you remember how long after the def'ts had made out their first answer in this case it was when A. M. Lea made said demand of you? Can you not remember that it was a few days before R. S. Meigs, of Nashville, called at your office, on his way to the federal court at Knoxville, in the latter part of November, 1854, and that Meigs and A. M. Lea were at your office together?

Answer. I do not know how long it was after the defendants had made out their first answer that it was when A. M. Lea made said demand. I not recollect of ever being in the office with Mr. Meigs.

13. Do you remember that when A. M. Lea asked for said copy you referred him to F. W. Lea, and that you requested F. W. Lea to see A. M. Lea, and tell him what he, F. W. Lea, had said, viz: that Wm. F. Keith had said copy?

Answer. I do not recollect of referring him at time to F. W. Lea; probably might have done it. I do not think that I requested Frank Lea to see A. M. Lea, and tell him what he, Frank, had said. I think I had a conversation with Frank Lea or A. M. Lea, I do not recollect which, in regard to Keith's having the certified copy. I remarked that there must be some mistake about it, as I had examined the office and could not find it myself. I think it was probably the location they were calling the certified copy. I had been hunting often and on probably for ten days.

14th. At whose request had you been thus hunting after it?

Answer. I think I had been hunting after it for both parties; both parties had requested it.

15th. Had not the def'ts and their attorneys been in the office hunting after said copy before and about the time the def'ts' answers were being prepared; and, if so, were they not at it several days and at different times, and tell all about it, who made the search, how long, and when they were at it, &c.

Answer. They had been hunting after it and wanting it for some time. I do not recollect the particular time.

16th. Why was it that you did not tell A. M. Lea and others when they asked for said copy that you had taken it with you to Virginia, and never seen it since?

Answer. Why, because I did not know that I had taken it there. I do not know yet that I took it there.

17. Please turn to the registry of grants in your office, "book K," and describe the situation of the two grants, No. 6250 and 6251, as they are recorded in relation to each other. Is not grant No. 6250 on the left hand page of the book as it is open before you; and give the date of s'd grant, and the date and number of the entry on which it was made, in whose name is it, and what is the appearance of the name of the granter as recorded? Also give a like description of said grant, No. 6251; and is it not on the right hand page of the open book before you, immediately opposite and facing No. 6250; and do not each fill the entire page on which they are recorded?

Answer. I have book K. of grants before me. Grant No. 6250 is on the left hand page of the book. The entry was made the 5th day of April, 1842, by William Park Lea, with a pen scratch on the letters "ark." It was granted on the 8th of December, 1842, and recorded the 18th of January, 1843, by J. C. Tipton, then register of the Ocoee District No. 6251, is on the right hand page of said book.. The entry was made on the 5th day of April, 1842, by William Park Lea, without any pen scratches about it. It was granted on the 8th day of December, 1842, and recorded the 18th day of January, 1843, by J. C. Tipton, then register of the Ocoee District. The No. of entry on the left hand page is 6634, and on the right hand page is 6115. And each grant has its regular form, but do not entirely fill the pages. Being on opposite pages they face each other. The letters "ark," in grant No. 6250, look as though they may have been inserted after the name William P. Lea was written, as P and k L are so close together.

19. Please state what county each of said tracts lies in?

Answer. No. 6250 lies in Hamilton County; No. 6251, from the locations of the land, lies in Polk County, though the name of the county is not given in the grant as recorded. The land lies in Ducktown, joining the land in dispute.

20. Did you ever see, before the commencement of this suit, the deed said to have been given by Wm. Park Lea to John Davis, now dec'd?

Answer. I do not think I ever did.

21. Did Thomas W. Mastin, now dec'd, ever talk with you about said deed and the difficulty in the title?

Answer. Yes he did. I do not know that it was the difficulty of the title from Lea to Davis, but from the title Davis was making to parties who were buying him out. He could not make Mastin and others a title to part of the property, I think was about the words or inference.

22d. Did any of the other respondents say anything to you at any time before the commencement of this suit about the difficulty in the title to the land in dispute, growing out of the deed from Wm. Park Lea to John Davis, saying that it was defective, not genuine, or anything to that amount?

Answer. I do not recollect now that they did; they may have. I never heard Keith nor Caldwell say anything about it, nor I recollect of hearing Calloway say anything about it; probably he may have said something about it.

23. Look at the deed spoken of, and regarded or treated in the pleading in the case as by Wm. Park Lea to John Davis, and tell, as near as you can, when you first saw it; and is not the name of Lea, in the body of the paper and as signed, written William P. Lea, and not Wm. Park Lea?

Answer. If I have seen it before I do not recollect it. I see it now, and the name in the body of the deed is "William P. Lea," and it is also signed "William P. Lea."

24. Are you familiar with the handwriting of Wm. Park Lea and F. W. Lea, having seen them both write; and if so, are they not both very much alike?

Answer. I am very familiar with the handwriting of Francis W. Lea, but not so familiar with William Park Lea's, but have seen him frequently write. They write very much alike.

25. If the said deed from Lea to Davis had been written and signed in the name of F. W. Lee, would it not have passed readily with most of persons who were acquainted with F. W. Lea's handwriting as his act and deed, and would you not have been likely to have regarded it as F. W. Lea's own writing?

Answer. Not this instrument I would not, sir, though a great many letters in it favor Francis W. Lea's handwriting. I think the instrument is in the handwriting of Park Lea, though there is some similarity in their handwriting. I could not tell how other men would look at it, not being able to give their opinion. Frank Lea hardly ever makes a deed in the form the one spoken of above is made. At least that I have seen of his make.

26. Are the papers purporting to be copies of grants No. 5620 and No. 7054, issued by you as register, &c., true copies from the records; and if so, make them Exhibit A and B to this your deposition?

Answer. They are true copies from the records of my office, and

I hereby mark them Exhibits A and B, and sign my name to the same.

27. When did you first see grant No. 5744 now shown to you, and was the name of the grantee then as it now appears in the grant?

Answer. I think this is the first time I ever seen the grant No. 5744.

28. Did you not go to the State of Missouri to see Wm. Park Lea about the title to the land in dispute; and if so, when and at whose instances did you go?

Answer. No, sir, I did not go to Missouri to see William Park Lea about the title to the land in dispute.

29. Did you not start to the State of Missouri to see Wm. Park Lea in the spring of 1853, say from 13th Jan'y to 1st Feb'y, about the disputed land or the title thereof?

Answer. I went to Missouri in the year 1852 or 1853, but did not go to see Park Lea on my business in regard to the land. I think the time I went was in January, 1853.

30. Was this trip not shortly after F. W. Lea's first return to Tennessee after he went to Missouri as Indian Agent?

Answer. Yes, sir; after he returned I went back with him.

31st. Did not Thos. W. Mastin, now dec'd, in December, 1852, or January, 1853, speak with you of having engaged F. W. Lea, then about to return to Missouri, to arrange with Wm. Park Lea, then in Missouri, to cure the defect in the title of John Davis to the land in dispute, and which he, with John Caldwell and A. H. Keith, had then recently purchased from said John Davis?

Answer. I do not recollect that he ever did, sir.

32. Did you ever have a similar conversation as the one named in the last question with any of the other respondents?

Answer. No, sir, I do not recollect that I ever did.

33. State whether or not your office has been so kept that persons could obtain access to the papers on file frequently in your absence?

Answer. They have in my absence went in. There was some depositions taken there in my absence.

34. State whether or not the complainant or his agent, A. M. Lea, have had access to the files in the absence of you or your deputy; and if so, when, how often, under what circumstances, and who was with them?

Answer. I do not know that they have.

35. State whether or not the respondents, or any of them, or their agents and attorneys, have had access to said file in the absence of you and your deputy; and if so, when, how often, under what circumstances, and who was with them?

Answer. There has some of them been in the office when I was not present. Frank Lea had the key of the office when they were taking depositions in there. Does his writing in there when is in

town, and probably some of the respondents may have been there with him. I may have been there and stept out, and left some of them in the office, but do not recollect any particular time.

36. Do not Thomas H. Calloway and F. W. Lea both live near Cleveland, Tenn., and have you not been living on terms of kindness and friendship with them up to the present?

Answer. Mr. Calloway lives near Cleveland, and Mr. Lea some five miles from the place; and as to the terms of kindness and friendship I never knew anything else.

37. Have you not heretofore been in the employment of each of them; and if so, in what capacity?

Answer. I have been in the employ of both of them, farming the principal thing.

38. At whose suggestion did you apply for the office of Register, and through whose influence did you obtain it?

Answer. I think Frank Lea is the first man that asked me if I would not take the office. He is the first man that I talked to about it; he said he had some papers then, some land papers, and it seemed to be a difficulty to get some one to take the office. James Johnston was appointed and did not accept, and probably some others.

39. State whether or not Thos. H. Calloway and F. W. Lea are now on friendly terms.

Answer. I think they are. I do not know of anything to the contrary.

40. Please look on the map of Ocoee District and see if there is any appearance of a dividing line on the N. W. qr. sec. 22, fr. T. 4 S. Range 5 E.

Answer. It looks as if there had been some marks or writing and scratched out here, or rubbed out.

40. Does it not also appear that the map of a water-course through sd. sec. has been erased or rubbed out?

Answer. Yes, sir.

41. Please state in whose name the original entry No. 6115, now partially erased by a knife, appears to have been made as it was originally recorded on the record of locations.

Answer. I cannot tell whose name was written first, or what was written first. There seems to be some marks of a pen rubbed out. I can see the evidence of a pen being there, but cannot tell what it has been.

Re-examination by Resp'ts' Sol.

Question 1. In the conversation referred to in your cross-examination with Thomas W. Mastin, dec'd, in which he spoke of the difficulty of Davis making a title to himself, Keith, and Caldwell, state if that conversation was in relation to the land in dispute, or was it in relation to another portion of the lands included in the same purchase from Davis, known as the Green and Smith lands?

Answer. I do not know what portion of the lands it was.

2d by same. Are there not a great many loose papers in your office, and could not a man, who was disposed to do so, very readily steal a paper from the office when you were present without your detecting it?

Answer. If a man was so disposed he could steal a paper from my office in my presence, because there are and has been a great many loose papers in my office.

3d by same. Was not A. M. Lea, the agent of compl't, and Francis W. Lea much together about the commencement of this suit, and frequently in your office together searching over the papers?

Answer. They may have been in the office together, once or twice. I do not know whether they were much together or not.

4 by same. Were they not in the office together in your absence?

Answer. I do not know whether they were or not. They might have been. Frank Lea had the key.

And further this deponent saith not.

JAMES S. BRADFORD.

"*Exhibit A. James S. Bradford.*"

"Exhibit A, proved by the deposition of James S. Bradford this "13th November, 1855." "JOHN H. PAYNE, *Com'r.*"

"Copy."

"THE STATE OF TENNESSEE."

To all to whom these presents shall come, greeting: Know ye, that in consideration of an entry made in the Entry Taker's office of the Ocoee District, of No. 5595, dated the fifth day of April, 1842, by Sylvester Blackwell as general enterer, there is granted by the said State of Tennessee, to the said Sylvester Blackwell and his heirs, a certain tract or parcel of land, containing eighty acres, lying in the County of Polk in the said district, situate in the third range, east of the basis line, first township, and fifteenth section, being the east half of the southwest quarter of said section, beginning at the northeast corner of said quarter, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Sylvester Blackwell and his heirs forever.

In witness whereof, James C. Jones, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville on the 8 day of August, in the year of our Lord one thousand eight hundred and fifty, and of American Independence the 67.

By the Governor,

Signed JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Sylvester Blackwell hath title to the above described land.

J. C. TIPTON,

Register of the Ocoee District.

Recorded 10th November, 1842.

"I certify the foregoing to be a true copy from records of my office.

Nov. 13th, 1855. JAMES S. BRADFORD,
Register of the Ocoee District.

"*Exhibit B. James S. Bradford.*"

"Exhibit B, proved by the deposition of S. Bradford, this the "13th day of November, 1855."

"JOHN H. PAYNE, *Com'r.*"

"Copy."

THE STATE OF TENNESSEE.

To all to whom these presents shall come, greeting: Know ye, that in consideration of an entry made in the Entry Taker's office of the Ocoee District, No. 7304, dated the fifteenth day of April, 1842, by Francis W. Lea as general enterer, the certified copy being assigned to Nelson Carter, there is granted by the said State of Tennessee, to the said Nelson Carter and his heirs, a certain tract or parcel of land, containing 160 acres, lying in the County of Polk in the said district, situate in the fifth range east of the basis line, 4th fractional township south, and fifteenth section, being the southeast quarter of said section, beginning at the southeast corner of said quarter, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Nelson Carter and his heirs forever.

In witness whereof, Neil S. Brown, Governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 24th day of August, in the year of our Lord one thousand eight hundred and forty-nine, and of American Independence the 74.

By the Governor,
Sig'd NEIL S. BROWN.

Sig'd W. B. A. RAMSEY, *Secretary.*

Nelson Carter hath title to the above described land.
Sig'd FRAN. W. LEA,
Register of Ocoee District.

Recorded 14th Dec'r, 1849.

"I certify the foregoing to be a true copy from records of my office.

Nov. 13th, 1855. JAMES S. BRADFORD,
Register, &c. of the Ocoee District.

No. 4.

Deposition of John C. Gant for Resp'ts. Aug't, 1855.

John C. Gant, aged about forty years, a witness on behalf of the respondents, in said cause; and the said John C. Gant being duly

sworn on the Holy Evangelist of Almighty God, deposeth and saith as follows:—

Question 1st by respondents. State as near as you can recollect all that occurred and was said between the parties on the sale of certain lands by William Park Lea in Polk County, Tennessee, to the Polk County Mining Company, or Polk County Copper Company, about any adverse claims by any other person or persons, and state all you know about it.

Answer 1st. John Hambright, as attorney in fact of William Park Lea, employed me as one of his attorneys to bring suit for the lands. I, in connection with Levi Frewhitt, Esq'r, Hon. T. N. Van Dyke. We brought or commenced an action of ejectment in Polk County for William Park Lea against John Caldwell, Alexander H. Keith, James Gray and others, and we also filed a bill in the Chancery Court in the name of William Park Lea against the same parties, to stay waste until the decision of the suit at law. During the pendency of those suits, on the 21st day of April, 1844, the said John Hambright, as attorney in fact, bargained, sold, and conveyed the lands to the Polk County Mining Company for ten thousand dollars. I drew the deed from William Park Lea to said company. I was present when the trade was made; in fact, John Hambright advised with me as the attorney of William Park Lea before the trade was made, and at the time it was made. Hambright, myself, and Thomas H. Calloway were present, Calloway trading as I understood it for and on behalf of the Polk County Mining Company. Hambright, as the agent and attorney in fact, was unwilling to take less than ten thousand dollars for the lands, and Calloway was unwilling to give it, because he said that he was informed Francis W. Lea was setting up some claims to the land. He said he had no idea that Francis W. Lea had any claim to the land either legal or equitable to the land, but that Francis W. Lea might bring a suit, annoy the company, and something might happen that Francis W. Lea might recover the land. Calloway said he felt certain in his own mind that the land belonged to William Park Lea. Hambright insisted that Francis W. Lea had no claim to the land, and would never bring any suit for the land, that he was only trying to extort some money.

Calloway at length agreed to make the trade, provided Hambright would give his bond to refund eight thousand dollars, on condition that Francis W. Lea brought a suit for said land on or before the 1st day of March, 1855, and prosecuted the suit and gained the land. To this Hambright assented. I drew the deed from William Park Lea to the Company and also Hambright's Bond, both of which were signed and acknowledged, and said bond left with me; and Francis W. Lea not having brought any suit for the land, after the first day of March, 1855, I surrendered the bond to Hambright; but since I was subpœned in this cause I have procured from Hambright said bond, and now have it before me, and here copy it cor-

rectly into this my deposition, which is in the following words and figures, to wit:—

"Whereas William Park Lea by his attorney in fact, John Hambright, has this day bargained and sold to the Polk County Mining Company the following described lands in Polk County, Tennessee, for ten thousand dollars; two thousand dollars due in two months, four thousand dollars due the first day October, 1854, and four thousand due the first day of December, 1854; said lands are described as follows, to wit: The east half of the northwest quarter of section twenty-two, and forty acres the southeast corner of the southwest quarter of section fifteen, all in fractional township four south, and range five east of the basis line in the Ocoee District in Polk County, Tennessee.

"Now it is alleged that Francis W. Lea sets up some claim to said lands, and if the said Lea brings suit for said lands on or before the first day of March, 1855, and carries on the suit and gains said lands, then the said John Hambright is to return and pay back to the said Polk County Mining Company the sum of eight thousand dollars, and interest from the time it may be paid.

"If said suit should be brought within said time, but does not gain the land or its value, the said Hambright is bound only to pay such costs and attorney fees as the said company may legally incur in the defence of such suit. Witness my hand and seal, this 21st day of April, 1854. JOHN HAMBRIGHT. [SEAL.]

"Witness, JOHN C. GANT."

At the same time said bond was given, the said suits of William Park Lea were compromised, and Calloway also gave his notes or obligations for said purchase-money to Hambright; I have forgotten whether or not he signed his name as security of the Polk County Mining Company, or gave his own individual liability. I heard of no other claim being set up to said lands, except that of Francis W. Lea, at and before said sale. I was attorney for William Park Lea, and I had heard of none except that of Francis W. Lea, and I had never heard of that until a few days before the trade. I am sure no other claim was mentioned or spoken of at the time of said sale. I had never heard of the complainant, William Pinckney Lea, having claim to said lands until some time after said sale. When Francis W. Lea's claim was spoken of, I had no confidence in it, and I told Hambright that he would never bring any suit, as I believed, because I had no idea that he had any title to the lands, legal or equitable, though that was only my belief. I had once or twice talked to Francis W. Lea about William Park Lea's title, and in these conversations Francis W. Lea set up no claim to the land.

Question 2d by same. Please state if there were any peculiar expressions in the deed from Hambright, as attorney in fact of Wm. Park Lea, to the Polk County Copper Company; and if so, why were those expressions incorporated in the deed?

Answer. I have not the deed before me, and do not recollect the phraseology of the deed; but my recollection is that it was not a general warrantee deed, but a special warranty or quitclaim deed. I knew that Keith, Caldwell, and Mastin alleged that they had bought the land from John Davis, who alleged he had purchased the land from William Park Lea; and Davis had a paper purporting to be a deed from William Park Lea to himself, which deed William Park Lea said he had never signed, or authorized his name to be signed to it; and we had brought suit for the land, and expected to prove on the *on the* trial, if that deed was set up, that it was not William Park Lea's handwriting. Whether it was or was not the deed of William Park Lea, was the question to be tried. And I remember that Hambright said at the time that he would no deed that would make him or William Park Lea liable; that he would rather go on with the lawsuit, and law it out. As I now recollect, he stated to Calloway that if his company got William Park Lea's title, that was all they wanted, and he would only convey such title as William Park Lea had. If there was anything to cause Hambright to be guarded in the deed, except the paper purporting to be a deed from Lea to Davis, I have forgotten it. I do not believe there was any. Francis W. Lea's claim may have influenced him some, but he said he had no fears of Francis W. Lea's claim. JOHN C. GANT.

It is agreed between the parties that either or both parties have leave to further examine John C. Gant touching the matters in controversy between the parties, on Tuesday, the 28th of this instant; and if the parties do not choose to make such further examination, then this deposition will be considered as closed. August the 9th, 1855. JOHN H. PAYNE, *Com'r.*

It is also agreed by the parties that the further taking of depositions in this cause, except the conclusion of Judge Gant's deposition, be postponed until the 4th Monday in September next, and to continue from day to day until completed; either party to have the right to take any depositions they may choose, upon furnishing the opposite party a list of the witnesses to be examined five days before said 4th Monday in Sept.; said list of witnesses, on part of complainant, to be furnished either to J. B. Cooke or George W. Rowles, Sol. for resp'ts; and on behalf of resp'ts, said list to be furnished to O. P. Temple or Wm. H. Sneed, Esq., Sol's for comp'ts.

It is also agreed that either party, after said 4th Monday of Sept., may take the depositions of any witnesses they may desire at Benton, Polk County, Tenn., upon giving the opposite party 5 days' notice; said notice to be served upon the counsel, as above stated. This agreement is made in consequence of the failure of witnesses to attend, who have been subpœnaed, at this time. Aug. 10th, 1855.

J. B. COOKE, *Sol. for Resp'ts.*
O. P. TEMPLE, *Sol. for Comp't.*

On this the 28th day of August, 1855, in pursuance of the agreement of the parties of the 9th of this month, as hereinbefore contained, the Hon. John C. Gant again appeared before me, John H. Payne, commissioner, &c., and was further examined by the respondents. The examination was continued at the same place where the witness was first examined, but neither the complainant nor any of his solicitors were present; but respondents were present by their solicitors, George W. Rowles and James B. Cook, as well as by Thomas H. Calloway.

Question by Respondents' Sol. Please state if you are acquainted with William Park Lea, and also with his handwriting.

Answer. I am acquainted with William Park Lea, and I was once well acquainted with his handwriting, when he was quite young, and until he was a man grown. He read law in the office of Mr. Frewhitt and myself, and copied some letters for us; and I then and before that time saw him write often; but shortly after that he left Cleveland, and from that time up to this I have not had much knowledge of his handwriting.

Question by same. Please look upon the original deed of conveyance now shown you from William P. Lea to John Davis, dated the 18th day of June, in the year of our Lord one thousand and forty-six, and signed William P. Lea, and say from your knowledge of the handwriting of the said William Park Lea, in whose handwriting you believe the body of said deed as well as the signature thereto to be.

Answer. I have looked upon the said deed now shown to me marked Exhibit O, and believe the signature thereto to be in the genuine handwriting of William Park Lea. During the frequency of said suits alluded to in my first examination, and before said suits were compromised, I obtained the possession of said deed marked Exhibit O, to this my deposition, and at that time I was not satisfied that the signature William P. Lea, to said deed, was in the proper handwriting of the said William Park Lea, nor was I satisfied that it was not his handwriting. The handwriting was apparently somewhat charged from the time he wrote in the office of Frewhitt and Gant, but since said suits were compromised, and but recently I have examined another deed of the said William Park Lea, witnessed by Daniel C. Trewhitt and Young L. McLemons, and proven and registered, and from the handwriting of that deed, which is dated the 16th of June, 1846, as well as some other writings, all doubt is removed from my mind, and I am now well satisfied that the signature William P. Lea to said deed marked Exhibit O, dated 18th of June, 1846, is in the proper handwriting of the said William Park Lea, both the signature and the body of the deed is in his handwriting.

And further this deponent saith not. JOHN C. GANT.

Exhibit O. Proved by the deposition of John C. Gant, August 28, 1855.

J. H. PAYNE, *Com'r.*

STATE OF TENNESSEE,
Bradley County.

This indenture, made this the 18th day of June, in the year of our Lord one thousand eight hundred and forty-six, between William P. Lea, of the County of Bradley, and State of Tennessee, of the one part, and John Davis, of the County of Polk, and State of Tennessee, of the other part: Witnesseth, that the said William P. Lea, for and in consideration of the sum of fifty dollars, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed, and confirmed, and by these doth grant, bargain, sell, alien, convey, and confirm, unto the said John Davis and his assigns forever, certain tracts or parcels of land, described on the general plan of the Ocoee District, as containing one hundred and sixty acres of land, more or less, and also, as being the east half of the southwest quarter of section fifteen, in fractional township four south, and range five east, and also the east half of the northwest quarter of section twenty-two, in the same range and township. And all and singular the appurtenances thereto belonging, or in anywise appertaining to the said John Davis, his heirs, and assigns. I further covenant and bind myself, heirs, and representatives, to warrant and forever defend the title to said lands, against the lawful claim of all persons whatsoever.

Witness my hand and seal, this the 18th day of June, 1846.

WILLIAM P. LEA. [SEAL.]

Witness, ELIAS DAVIS,
YOUNG DAVIS, sworn to.

STATE OF TENNESSEE,
Bradley County.

Personally appeared before me, John H. Robertson, Clerk of the County Court for the County of Bradley aforesaid, Young Davis, one of the within name witness, who after being duly sworn, depose and say he is acquainted with William P. Lea, the bargainer named in the foregoing deed, who in his presence acknowledged the execution of the same on the day it bears date for the purposes therein mentioned.

Witness my hand at office, December 17th, 1852.

JOHN H. ROBERTSON, *Cl'k.*

STATE OF TENNESSEE,
Polk County.

Personally appeared before me, Emmons P. Douglass, Clerk of the County Court for Polk County, Elias Davis, one of the subscribing witnesses to the within deed of conveyance, who after being

duly sworn by me, depose and says he was acquainted with William P. Lea, the bargainer, that he acknowledged the due execution of the same to be his act and deed, and for the purposes therein contained.

Witness my hand at office *office* in Benton, January 28th, 1853.

E. P. DOUGLASS, *Clerk.*

State of Tennessee, Polk County, Jan'y 28th, 1853. 12 o'clock M.

Then was the foregoing deed of conveyance, together with the clerk's certificate, noted in Note Book A, page 102, registered in my office in Benton, in Book D, page 222–223.

ROBT. N. FLEMING, *Register.*

No. 5.

Deposition of John Hambright for Defendant. September, 1855.

John Hambright, aged about fifty years, next introduced, sworn, and examined on behalf of respondents.

1 Question by solicitor of respondents. Are you acquainted with the parties to this suit?

Answer. I am.

2d by same. Are you acquainted with the land which is the subject of controversy in this suit?

Answer. I am.

3d by same. You will please state if you as agent of William Park Lea at any time made any kind of trade with Thomas H. Calloway, as agent of the Polk County Copper Company, about the land in dispute; if yea, state the character of the negotiation, and when it was made.

Ans. I was agent for William Park Lea, and did make a trade with Thomas H. Calloway, as agent for the Polk County Mining Co., about the land in dispute. I as attorney for Wm. Park Lea had brought a suit for the land in dispute, and the trade with Mr. Calloway was a compromise of said suit; or in other words, I sold Wm. P. Lea interest or claim to said land to the Polk C'ty Mining Company. It was on or about the 20th of April, 1854.

4th by same. When you made the sale to Thos. H. Calloway as above detailed, did you as agent or attorney of William Park Lea execute a deed to said land? and if yea, did said deed embrace any unusual or peculiar expressions? and if so, state why such were incorporated in said deed.

Answer. I as attorney of Wm. Park Lea, did execute a deed; there was no unusual expressions used in said deed as I knew of; the deed was intended to be a quitclaim deed.

5th by same. To whom was said deed made?

Ans. The deed was made to the Polk County Mining Co.

6th by same. At the time you executed the deed as hereinbefore stated, was there also an agreement made between you and Thos. H. Calloway, and reduced to writing and signed by you and Cal-

loway as agent of the Polk County Copper Company? and if so, why was this article drawn and signed by the parties?

Ans. On the same day I executed the deed there was an agreement made and drawn up in writing and signed by me. I am not sure Calloway signed it; the reason that it was done, F. W. Lea was setting up a claim for the land, saying the land was his, and said he intended to bring suit for the property, and Calloway would not agree to settle the suit until I gave a refunding bond in lease. F. W. Lea brought suit by the 1st of March, 1855. F. W. Lea not having brought the suit he threatened until the time expired, I called over J. C. Gant, who held the bond, and got the bond, which is now in my possession.

7th by same. If you have the original bond spoken of in your last answer now present, please attach it to your answer to this question; if it is not present, please state if you furnished the Honorable John C. Gant with a copy of the same to be used by him in his examination as a witness in this suit.

Ans. I have not got the bond present, it being at my house in Calhoun, Tenn.; I furnished the Hon. J. C. Gant with the original bond which, he informed me, he wished to use on his examination as a witness in this suit: after Mr. Gant was done with the bond he returned it to me.

8th by same. You will please state if at the time this sale or compromise between you and Calloway, William Pinckney Lea, the present complainant, was setting up any claim to the land now in dispute.

Answer. I never heard at time Wm. Pinckney Lea claimed the land.

9th by same. You will now state if the sale and only object of executing the refunding bond you have spoken of, was to protect Thos. H. Calloway, as agent of the Polk County Copper Company, against a suit threatened by F. W. Lea, and was this fact so stated by respondent Calloway at the time said bond was executed?

Ans. It was done for the above-mentioned purposes, and so stated by Calloway at the time.

10th by same. State as near as you can the first time you ever heard of William Pinckney Lea setting up claim to the land in dispute.

Answer. I cannot give the day and date precise, it was a month or more after the compromise was made by myself and Calloway that I first heard of Wm. Pinckney Lea setting up claim for it.

11th by same. If you had a conversation with William Park Lea about the time and just before the compromise you have spoken of was made in reference to a deed made by him, I mean William Park Lea to John Davis, embracing the land in dispute, state the substance of that conversation.

Answer. Wm. Park Lea was at this place a few days before the compromise was made; he was anxious to see the deed that was

alleged to have been made by him to John Davis, which I had written to him: that the deed was in possession of J. C. Gant, our attorney: the deed embraced the land now in controversy: the deed was handed to Wm. Park Lea at the office J. C. Gant: he examined the deed closely, and in a private conversation between us on the subject, he informed me that deed was made by him.

12th by same. Was the conversation you have detailed in your last answer had after the suit was instituted by you as agent of William Park Lea, against Caldwell, Keith, and Mastin, for the land now in dispute, and did William Park Lea say anything about the advantage of a comprise, because of said deed, and what did he say, if anything, on this point?

Answer. It was after the institution of the suit by me as agent of Wm. Park Lea, against Caldwell & Co.: in a few days after Wm. Park Lea saw the deed he left for his home in Mo., and interested me to close the suit on the best terms I could.

13th by same. Please state if you know of anything which you have not stated that will benefit respondents in this suit; if so, please set it out in your answer to this question.

Ans. I know of nothing.

Cross-examination.

Quest. 1. You are now shown the original grant, No. 5744, covering the land in dispute: Please to tell what you know as to the history of that paper, from the date of its being taken from the office of the register of the Ocoee District, stating particularly when you first saw it, in whose possession it then was, and whether it then contained the letters "ark", between the letters P and L, in the name of grantee.

Answer. I do not know when the grant above mentioned was taken from the office of the register, nor do I know by whom it was taken: the first time I saw the grant was in Athens, Tenn., I cannot tell the time: the grant, when I saw it, was in possession of David Cleage, Cashier of the Planters' Bank: he showed me the grant at my request: the words William Park Lea was then in the grant: my recollection on that point is good, as myself and Mr. Cleage had a conversation on that head: I never saw the grant until after I had made the compromise with the Polk County Mining Co.

Quest. 2. You are now shown what purports to be a deed from William P. Lea to John Davis, dated 18th June, 1846, covering the land in dispute: Please to state when you first saw such deed, in whose possession it was, and whether it had then the attesting names now written upon it.

Ans. The first time I saw the deed was near the 1st of June, 1853, on or about that time: the deed was then in the possession of Elias Davis, of Ducktown: the deed then was just as it is now.

Ques. 3. Did you subsequently see the deed alluded to in the last question in the hands of John C. Gant, and if aye, please to state

for what purpose it was in his hands, and from whom he received it, if you know.

Answer. I saw the same deed in the hands of John C. Gant: since I saw it at Davis's: to what purpose Mr. Gant wanted the deed I cannot say: I saw Mr. Gant receive the deed from either Elias Davis or James Davis, I cannot be positive now which: James Davis is a brother to Elias Davis.

Ques. 4. In the prosecution of the suit of William Park Lea against Keith, Mastin, & Caldwell, for this land now in dispute, whom did you consult as legal adviser?

Answer. I consulted J. C. Gant, Levi Trewitt, and T. Nixon Vandyke.

Ques. 4. In prosecuting the suit referred to in last question, were you aided, assisted, advised, or in any wise abetted by Thomas H. Calloway, or was he present at any of the consultations with your legal advisers?

Answer. I do not believe Mr. Calloway was ever present at any consultation I ever had with any of my lawyers: I did consult Mr. Calloway, but he always told me he would have nothing to do with it: he appeared friendly to William Park Lea.

Ques. 5. Had you any understanding with any of the parties to this present case, that they were to share with Wm. Park Lea in any advantage that might be derived from his suit against Keith, Mastin, & Caldwell, before alluded to?

Answer. I had no understanding with no person to share any of the advantages that might arise from the suit; I never received no such instruction from Wm. Park Lea.

Ques. 6. If you have ever seen a bond from Elias Davis to Keith, Mastin, & Caldwell, or either of them, obliging him under a certain penalty to have certain deeds proved and registered, please to state the purport of the same, especially stating the sum named in the bond as forfeiture, and to what papers such bond particularly referred.

Answer. I never saw no such bond.

Ques. 7. Please to state whether the sum or sums agreed by Calloway in behalf of Polk County Copper Company, to be paid to Wm. Park Lea for his quitclaim deed to the land in dispute, was actually paid to the said Park Lea, according to the face of the agreement made with you as attorney in fact.

Answer. In the agreement there was time given for the payment of the money of the compromise. Wm. Park Lea sold his claim to me, and the money is not all paid yet but is well secured, and I preferred the interest to having the money, and has told the parties so.

Ques. 8. In the bill filed by you as attorney in fact of Wm. Park Lea, in the Chancery Court at Cleveland, on the 7th day of September, 1853, to stay waste, you state that the parties then holding the land now in dispute, to wit, Keith, Mastin, & Caldwell, were holding adversely to said Park Lea "under a forged deed:" please

to state your knowledge of facts or your reasons for so believing at that time, and what deed you meant to charge as forged.

Answer. Wm. Park Lea said he had no recollection of ever conveying the land in dispute to John Davis: the reason that I charged the deed forged was from what Park Lea said: he appeared to be certain he had made no deed to John Davis, and I believed he was a correct man; the deed given, or purporting to be given, from Park Lea to John Davis, was the one alluded to in the bill.

And further this deponent saith not.

JOHN HAMBRIGHT.

No. 6.

Daniel C. Trewhitt, aged about 35 years, a witness for the respondents, being introduced and sworn, deposes and says:—

Question 1st by respondents' sol. Please look upon the deed now shown you, dated the 16th day of June, 1846, executed by William P. Lea to John Davis, and witnessed by you and Young L. McLemore, and marked Exhibit A, to your deposition, and state whether said deed was executed at the time it bears date, and by whom it was executed.

Answer. I have looked at said deed, and find it witnessed by me. The signature to the deed purporting to be mine is in my handwriting. I have no distinct recollection of the execution of this particular deed; but I have an imperfect recollection of William Park Lea, about the time this deed bears date, executing in my presence a deed to some person for some land, but to whom, or for what consideration, I do not now recollect. I am satisfied that the deed was signed by William Park Lea in my presence, or acknowledged in my presence, or I would not have witnessed it. I remember of being called on to prove this deed, and at the time I stated to the clerk the handwrite of D. C. Trewhitt as a witness was mine, and I was satisfied that the deed was signed or acknowledged in my presence, or I would not have witnessed it; but the particular time and circumstances under which executed, my recollection was not distinct.

By same. Please state how the name of the bargainer is signed to said deed.

Answer. In the following letters.

WILLIAM P. LEA. [SEAL.]

By same. State if you are acquainted with the handwriting of William Park Lea, and was acquainted with it about the date of said deed.

Answer. I was very well acquainted with his handwrite at and about the date of said deed; we read law together the most of the time he was reading law; saw him write a great deal, and have ever since had in my possession a book containing notes by him upon legal questions.

By same. Please look upon said deed, marked Exhibit (A), to

your deposition, and state whether that portion of the body of said deed which is in writing, as well as the signature thereto, is in the handwriting of the said William Park Lea.

Answer. I believe the signature is, and the written part of the body I also believe is, except the words John Davis, about which I cannot speak in confidence, but do not think I am able to say it is not also in his handwrite, but have my doubts as to that.

By same. Please look upon the original deed now shown you by the commissioner, executed by William P. Lea to John Davis, dated the eighteenth day of June, eighteen hundred and forty-six, marked at the top Exhibit O, and endorsed on the back "Exhibit O, proved by the deposition of John C. Gant, August 28, 1855, J. H. Payne, Com.," and state if the body, as well as the signature to said deed, are in the handwriting of William Park Lea.

Answer. I am of opinion they both are such in my opinion, tho' the resemblance of his and Frank Lea's is so great, I might be mistaken.

Cross-examination.

1st Interrogatory by complainant's agent. If you have ever seen any grants for lands in the Ocoee District issued to William Park Lea, please to state how the name of the grantee was written in the body and on the back of such grants.

By same. I do not now remember that I ever did.

2d Int. by same. What was the usual style of signature of Wm. Park Lea, when you and he were students of law together?

Answer. He sometimes in writing his name wrote it the one way and then the other. I cannot say which way the most frequent.

3d Int. by same. Who presented to you for probate the deed marked Exhibit A, to your deposition?

Answer. I cannot remember.

4th Int. by same. Were you concerned as counsel of Wm. Park Lea in a suit instituted by him for the land in dispute in this cause, against Keith, Mastin, and Caldwell?

By same. My father, Levi Trewhitt, was concerned for William Park Lea as counsel for some land against some persons. Keith, Mastin, and Caldwell, I think were defendants, whether this land I do not know. I lived at Harrison, and altho' a partner with my father, yet I knew not the particulars involved in the suit. The suit I allude to is one in which Jack Hambright was concerned as agent.

And further deponent saith not. D. C. TREWHITT.

Exhibit A to Daniel C. Trewhitt's Deposition.

WILLIAM LOWRY, *Commissioner.*

This indenture, made this the 16th day of June, 1846, between William P. Lea, of the County of Bradley, and State of Tennessee, of the one part, and John Davis, of the County of Polk, and State

of Tennessee, of the other part: Witnesseth, that the said William P. Lea, for and in consideration of the sum of ten dollars, to him in hand paid, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth convey and confirm to the said John Davis, his heirs and assigns forever, a certain tract of land, situated in the County of Polk, bounded as follows: Being the northeast fractional quarter of section twenty-seven, in fractional township four south, and range five east, of the basis line in the Ocoee District, beginning at the northwest corner thereof, containing nine acres, more or less, which tract of land, together with the hereditaments and appurtenances thereto belonging, the said William P. Lea covenants for himself and his heirs, &c., to the said John Davis, his heirs, and assigns, will warrant and forever defend against the lawful claim of all persons whatsoever, by these presents as an indefeasible inheritance in fee simple.

In testimony whereof the said William P. Lea hath hereunto set his hand and seal, the day and year first above written.

WILLIAM P. LEA. [SEAL.]

Signed, sealed, and delivered in presence of
DANIEL C. TREWHITT, sworn to.
YOUNG L. MCLEMORE, sworn to June 12th, 1854.

STATE OF TENNESSEE,
Bradley County.

Personally appeared before me, John H. Robertson, Clerk of the County Court for the County of Bradley aforesaid, Daniel C. Trewhitt, and Young L. McLemore, the within named witnesses, who after being duly sworn, depose and say that they are acquainted with William P. Lea, the bargainer named in the foregoing deed, who in their presence acknowledged the execution of the same on the day it bears date, for the purposes therein mentioned.

Witness my hand at office this 12th day of June, 1854.

JOHN H. ROBERTSON, *Cl'k.*

Fee paid, 25 c.

STATE OF TENNESSEE,
Polk County.

June 14th, 1854. 7 o'clock A. M.

Then was the foregoing deed of conveyance, together with the clerk's certificate, noted in Note Book A, page 131, registered in my office in Benton, in Book E, page 389.

ROBERT N. FLEMING, *Register.*

Register's fee, $1 00
State tax,

$1 00

Filed in my office by respondents, Nov. 10, 1856.

N. GAMMON, *Cl'k C. C. U. S.*

No. 7.

Deposition of William L. Brown. Nov., 1856.

William L. Brown, aged about thirty-six years, sworn and examined on the part of respondents.

1 Question. On, before, and after the 5th day of April, 1842, were you living in the town of Cleveland, Bradley County, Tennessee? Was it on that day that the land office of the Ocoee District opened for the entry of land in said district at one cent per acre? State if at the opening of the office at the one cent entry, there was or not a large crowd in Cleveland for the purpose of entering land.

Answer. I was living in the town of Cleveland, Bradley County, Tennessee, on, before, and after the 5th day of April, 1842. I do not recollect that it was on that day that the Entry Taker's office was opened for the entry of land at one cent per acre. There was a large crowd at the opening of the office, at the one cent entry, and I suppose they were wanting to enter land.

2 Question. You will please state, if on the receiving of locations and money, on the first day of the one cent entry, they were received at the counter of the Entry Taker's office, or on that day were they received at the window?

Answer. My recollection is that they were received at the window.

Question. Did you, or not, yourself, on that occasion make entries?

Answer. Yes.

Question. Were you, or not, while the land office was open for entries, in the time of Luke Lea's holding the office, frequently in the same? What was the course of business observed in said office? When on any day an entry of land was made at general entry, was the name of the person tending the location, and money, written on the plan of the district, or map, as the enterer of the same, at the time the location and money was received, or was the location and money received, and after the office was closed for that day, was the name then written on the plan of the district, or how otherwise? If several persons put in locations as general enterer on the same day, on the same piece of land, how was it determined as to who was to be entitled to the land?

Answer. I was frequently in the land office at the time Luke held the same. When the location and money was received on a general entry, the name of the person tendering the location and money, was not entered on the plan of the Ocoee District, until the office closed, and then if more than one had located on the same piece of land, they sold the same to the highest bidder, and he became the general enterer.

4 Question. You will please state if you are acquainted with William P. or William Park Lea, and James A. Lea, sons of Luke

Lea, deceased. Have you had business transactions with the said William Park Lea? have you seen him write?

Answer. I was acquainted with William P. or William Park Lea and James A. Lea, and had business transactions with William Park Lea, and have seen him write.

5 Question. You will please look on the paper now shown to you, marked on the back of the same "Exhibit O, proved by the deposition of John C. Grant, August 28, 1855. J. H. Payne, Com'r," purporting on its face to be a deed from William P. Lea to John Davis, dated 18th June, 1846, and state from your knowledge of the handwriting of William Park Lea, or not, if you believe the signature of William P. Lea to said deed, to be in the handwriting of William Park Lea. Also state if you know how said Lea was in the habit of signing his name; if on this point any circumstance of a business character presents itself to your mind, detail it, with its date, and circumstances.

Answer. I have looked on the paper now shown me, marked Exhibit O, and believe the face of said Exhibit O, and the signature thereto is in the handwriting of William Park Lea. Some ten years ago probably, William Park Lea transferred to me from five to ten certified copies of entries for mountain land; he signed them over to me on the back, and signed his name to them, "William P. Lea," in the style and form that his name is written to Exhibit O. What makes it so familiar to me of how his name was written on the certified copies, is, that I kept them in my possession some ten years, and looked at the signature on them frequently.

Question. Please look on the book of the Ocoee land office marked B, with the name of Francis W. Lea written under the letter B, on the cover or back of said book, which book contains the number of the entries of land, and the enterer's name written opposite to it, and in said book, and state if the following is a true copy of what appears written on one of its pages on the right hand of Nos. 7246 to 7257, "Note.

The numbers omitted on this page upon a re-examination of the locations proved to have been previously entered, the locations were recorded, but no copies given out, and they are now erased on the record book. J. A. LEA."

And if a true copy of the note or memorandum as it appears in Book B. State whether the original, from your knowledge of the handwriting of James A. Lea, is, in your belief, in said Lea's handwriting.

Answer. The note is a true copy of the original, and I believe the original note is in the handwriting of James A. Lea.

Question. Look on the paper now shown to you, and which purports to be entry No. 5446, or purports to be the origal location for the land described in it. Please copy the same into your deposition in answer to this question.

Answer. William P. Lea enters, as general enterer, eighty acres of land, being the east half of the southwest quarter of section fifteen, in fr. township four south, and range five east of the basis line, in the Ocoee District, beginning at the southwest corner of said quarter, entered at one cent per acre, April 5, 1842.

5446."

The above is a true copy of the original.

Question. Please look again on the original, of which you set forth a copy in your last answer, and state whether or not, from your knowledge of the handwriting of James A. Lea, son of Luke Lea, deceased, you believe the said purported location to be in his handwriting or not.

Answer. I do not think it is, from the knowledge I have of his handwriting.

Cross-examination.

1st Int. by complainant's agent. Please to state whether there is or is not a very strong resemblance between the note signed J. A. Lea, in the booked marked "B, Francis W. Lea," and the paper purporting to be the original location, No. 5446, referred to in your last answer, as to the handwriting of both papers.

Answer. I cannot see much resemblance in them.

2d Int. by same. Please to state how the name of the enterer was written, in the face of the certified copies to which you alluded in your examination in chief as having been assigned to you by William Park Lea.

Answer. It was written William P. Lea, the same as the transfer.

3d Int. by same. Please to state whether it was or was not a usual thing for persons wishing to go into the office of the Entry Taker of the Ocoee District, when the front door was closed to the public, to pass through the counting room of P. J. G. Lea, and through the back yard of his store and dwelling, and thus gain admission into the said office by the back door of the same, sometimes in office hours.

Answer. I never knew any person, except some of Luke Lea's boys, to pass that way.

4th Int. by same. Please to state whether you have or have not yourself passed into the said office by the door opening into the back yard.

Answer. I have passed into the land office from Dr. Lea's counting room, which opened in the back yard, some twenty steps from the counting room door to the door of the land office, not on office business, but to talk with the boys, in the office.

Re-examined.

Question. Please state when, if at all, a door was cut or opened from the land office, leading into Doct. Lea's dwelling-house.

Answer. Not until the land office was removed from there, is my recollection.

And further this deponent saith not. WM. L. BROWN.

Deposition of Geo. T. Parker, for Resp'd's. Nov., 1856.

1 Question. Please state if, on and before the 5th day of April, 1842, you were a resident citizen of the town of Cleveland. If so, state if you were often at the land office of the Ocoee District, in said town, both before and after the date referred to. According to the regular course of business observed in said office, when were general entries made in said office, marked on the plan of the Ocoee District? Were they marked on the plan of the District at the time the location was handed in, or how otherwise?

Answer. I was a resident citizen of the town of Cleveland on, before, and after that day. I was frequently at the office before and after that date, and was there on that day. When general entries were made, locations were received in the morning, and receipts for entries were not handed out until four o'clock of the same day, except on very throng days, and then it was sometimes several days before receipts were handed out.

Question. Do you recollect, according to the course of business in the office, at what hour in the evening the office closed at?

Answer. There was a stated hour for closing, but I do not recollect that.

Question. Up to the hour of closing the office, on any given day, was it admitted to put in as many different locations, by different persons, as general entries, on the same piece of land, as were offered? If so, please state how it was determined, who the enterer was, and was this done until the office closed, and how was it then determined?

Answer. All men were permitted to put in locations on the same land, as general enterers, that were put in on the same day. And where there were more than one location on the same piece of land, after four o'clock, as a general thing, except on throng days, the land was put up to the highest bidder among those having locations on the land, and the man who bid the highest was considered the general enterer.

Question. On any day, according to the course of the office, was it known, until the close of the office, who had put in locations for any piece of land? And if there was but even one location put in for any particular piece, was the name of the person putting in the location marked on the plan of the district, or the enterer, until the office closed, and was this course not observed in order that all might put in their locations who designed on the same land, until the office closed?

Ans. I do not think that any man's name was put on the books as the enterer of land until after four o'clock in the evening, as

general enterer, but an occupant enterer's name was entered on the books whenever he produced his proven occupant.

Question. You will state whether or not, on the 5th of April, 1842, there was or not a large crowd in Cleveland, and whether many entries were made on that day. According to the best of your recollection, were the locations received at the counter of the office, or was the door closed, and were they received at the window?

Answer. If that was the day of the one cent entry commencing, there was a large crowd in Cleveland. There was a great many locations put in on that day. I think that locations were not received at the counter on that day, but at the window.

Question. Were you acquainted with Wm. P. or William Park Lea, a son of Luke Lea, deceased? Did you or not have business transactions with him? Have you seen him write?

Answer. I was acquainted with him, and have had business transactions with him, and have seen him write.

Question. You will please to look on the paper now shown to you, marked on the back "Exhibit O, proved by the deposition of John C. Gant, August 28, 1855, J. H. Payne, Com'r," purporting to be a deed for land to John Davis, and purporting on its face to be made and signed by William P. Lea, dated 18th June, 1846. State, from your acquaintance with the handwriting of William Park Lea, whether you believe said deed and the signature thereto to be the handwriting of said Lea or not.

Answer. I have looked on the paper now shown to me, marked on the back "Exhibit O," and believe that the whole deed is in his handwriting, as well as the signature thereto.

Question. When did Dr. P. J. G. Lea, the brother of the complainant in this cause, remove to Missouri, if you recollect?

Answer. It was either in eighteen hundred and forty-eight or forty-nine.

Cross-examined.

Interrogatory by T. E. S. Russurerm, sol'r for compl't. You have stated that you were acquainted with the handwriting of Wm. Park Lea; please state whether it was not his habit, in signing his name, to sign it W. Parke Lea or Wm. Park Lea.

Answer. He sometimes signed his name William P. Lea, and sometimes William Park Lea. I do not recollect of ever seeing him sign his name W. Park Lea or Wm. Park Lea.

Inter'y by same. Are you familiar with the handwriting of Luke Lea, late Entry Taker of the Ocoee District, and of his sons William Parke Lea, James Armstrong Lea, and Francis W. Lea? And if yea, were their handwritings not very much alike—enough so to mislead any one not familiar with the handwriting of each?

Answ'r. I am acquainted with the handwriting of Luke Lea, William Park Lea, James A. Lea, and Francis W. Lea. They wrote

very much alike. I think that James A. Lea wrote a little more like Luke Lea than either of the other two.

Inter'y by the same. Please state whether you are sufficiently acquainted with James A. Lea's handwriting to identify it.

Answer. I think I would know it from the writing of William Park and Francis W. Lea, but he wrote so much like the old man that it would be hard to tell which it was that wrote it, James A. Lea or Luke Lea.

Inter'y by the same. You will please look at the book which purports to be the day-book, and marked with the letter B, containing a list of the names of enters of land in the Ocoee District, and turn to the third page, under the date of 19th April, 1842, and examine a note on said page, signed J. A. Lea, and compare the same with a memorandum marked 5446 on the back, but which is dated Ap'l 5th, 1842, and state whether or not they are not in the handwriting of Jas. Armstrong Lea.

Answer. I have examined the memorandum here exhibited, and the location of William P. Lea, of the 5th of April, 1842. They look very much alike. They may be in the handwriting of James A. Lea, but they do not now look to me like his handwriting; he generally wrote a better hand.

Inter'y by the same. Please look at the map of the Ocoee District, belonging to the Entry Taker's office, and look at the plan or map of range 5 east, fractional township 4, southeast half of the southwest quarter of section 15, and state whether or not it is not in the same handwriting of the location which you have just examined, No. 5446.

Answer. I have examined the handwriting referred to on the map, and the location referred to: I cannot tell whose handwriting they are in, the handwriting on the map looks more like James A. Lea's than the location of William P. Lea of *of* the 5th day of April, 1842.

Inter'y by the same. You will please examine the location heretofore exhibited to you marked 5446 (and designated in the interrogatory as a memorandum), and state if it does not appear to have been written hastily, and whether, from the appearance of the paper, you would infer that it had been torn and not cut from the sheet upon which it was originally written.

Answer. As to whether it was written hastily or not, I cannot tell, but it has been torn off of the sheet it was on.

Inter'y by the same. Please state whether you were familiar with the room in which the land office for the Ocoee District was kept, and if so, state whether or not there was an entrance from the family room of Dr. P. J. G. Lea, and also whether or not there was an entrance through the counting room of the said Dr. P. J. G. Lea, and also whether there was not an entrance through the tailor shop of Brown and Osment, by the back door.

Answer. I was acquainted with room which the land office of the

Ocoee District was kept; there was a back door and front door to said of., but there was no door, that I recollect of, from the land office to the family room of P. J. G. Lea: I was only few yards from the back door of the land office to counting room door of P. J. G. Lea, and plank petition separated the land office and the family room of P. J. G. Lea.

Re-examined.

1 Question. The back door of which you speak, did that open behind the counter in the office? was it used for persons to come in at to make entries? was not the front door used for persons to come into the office on business, and did not said door front on the public square?

Answer. The back door I speak of was made for the accommodation of the entry taker and his clerks, and used by them only, except some intimate friend was *was* admitted to pass said back door: the front door was the one those wishing to make entries went in and out of the office, at the front door opened on the public square.

Second Cross-examination.

1st Int'y by complainant's agent. If you were present, or near by, when the deposition of Francis W. Lea was being taken in this office, and in this cause, about a year since, please to state whether any assault was made on A. M. Lea, the complainant's agent, by the said Francis W. Lea; and if yea, state the cause of such assault, and the circumstances thereof.

Answer. I was in Court House yard at the time above referred, but not in the house until I heard loud talk in the clerk's office, when I stepped to the door, and Francis W. Lea and A. M. Lea was in an uproar: A. M. Lea said but very little that I heard, but Frank used very loud words: the cause of the difficulty I know nothing about.

Re-examined.

Question. Do you know, from hearing Francis W. Lea express himself, or otherwise, what was the state of his feelings towards Thomas H. Calloway in the years 1852, 1853, and 1854, and if hard feeling, state the alleged cause?

Answer. I know only from rumor, that there was any hard feelings between Thomas H. Calloway and Francis W. Lea; neither of them ever said anything to me about each other: I suppose there was hard feelings between them, but the cause I know nothing of the time of the bad feelings, it was from 1852 to 1854.

And further this deponent saith not.

GEO. T. PARKER.

No. 9.

Deposition of John Osment, for Resp'ts. Nov., 1856.

John Osment, aged about forty-one years, sworn and examined, for respondents.

1 Question. State if you resided in the town of Cleveland, Bradley County, Tennessee, before, on, and after the 5th day of April, 1842; and if you know, state whether or not it was on the day last mentioned, that the Ocoee Land Office opened for entries of land in said district at the one cent per acre entry.

Answer. I resided in the town of Cleveland, Bradley County, Tennessee, before, on, and after the 5th day of April, 1842; to the best of my recollection, it was on that day that the Ocoee Land Office opened for entries of land at one cent per acre.

2 Question. On the day of the said Land Office opening at the one cent entry, please state whether or not there was a large crowd in Cleveland for the purpose of making entries of land? state if the locations for the entry of land and money were received at that time at the counter of the office or at the window.

Answer. There was at that time a large crowd in Cleveland, for the purpose of making entries. The locations, for the entry of land and money, to the best of my recollection, were received at the window, I think the door was shut.

Question. According to the course of business observed in said office, where a person tendered his location and money for general entries of a piece of land, was his name then entered on the plan of the Ocoee District, as the general enterer of the land, or was the location and money merely received at that time; if so, how long was it before who the enterer was, was declared; and in case of there being more than one location on the land, how was it settled or determined who should have the land?

Answer. His name, according to the course of business pursued in the office, was not entered at the time the locations and money were received, as general enterer of land. The day after the location was put in, who was enterer was declared, if there was no clash in entry, and if there was, the land was sold to the highest bidder of those having locations upon it. If there was no clashing of entries, probably it was put on the book the same day, but not until after the office closed; but they hardly ever had time on the first day it opened to put them on the book.

Question. Were you acquainted with William P. or William Park Lea, a son of Luke Lea, deceased? Have you had business transactions with him? have you seen said Lea write?

Answer. I was acquainted with him, and have had some business transactions with him, and have seen his handwriting.

Question. Please look on the paper now shown to you, marked "Exhibit O, proved by the deposition of John C. Gant, August 28, 1855, J. H. Payne, Com'r," and state if, from your acquaintance with the handwriting of said William Park Lea, you believe or not said paper, purporting on its face to be a deed from William P. Lea to John Davis, is in the handwriting of William Park Lea.

Answer. I have looked on the paper shown to me marked Exhibit

O, and believe, from the best of my knowledge, that the signature to Exhibit O is in the handwriting of William Park Lea.

Question. You will please state, if you recollect, the year in which Doct. P. J. G. Lea, the brother of the complainant, removed from Cleveland to the State of Missouri.

Answer. I do not now recollect the year he left here, but think it was in the year 1849 or 1850.

Cross-examination.

1st Interrogatory by complainant's agent. Please to state whether you are acquainted with the handwriting of Jas. Armstrong Lea, a son of Luke Lea, formerly Entry Taker of the Ocoee District.

Answer. I have some recollection of his handwriting.

2d Int. by same. Please to look at the paper now shown you by the Commissioner, purporting to be the original location of entry No. 5446, in the Ocoee District, and state in whose handwriting you believe it to be.

Answer. I do not know the handwriting.

3d Int. by same. Please to compare the writing of the said location No. 5446, with that of a note or memorandum, consisting of five lines, in the book now shown you, marked on the outside "B, Francis W. Lea," which memorandum is signed J. A. Lea; and state whether you believe the two pieces of writing to have been done by the same or by different hands.

Answer. I have compared, according to the foregoing interrogatory, and believe the handwriting in the book to be the handwriting of James A. Lea, but do not know the handwriting of said location No. 5446. I do not believe the handwriting of said location to be James A. Lea's.

4th Int. by same. Please to state whether the said location No. 5446, appears to have been torn roughly from the other part of the sheet upon which it was written.

Answer. It does.

5th Int. by same. Please to state whether the said location No. 5446, appears to have been written hastily or otherwise.

Answer. I could not say whether it was written hastily or otherwise. All the letters seem to be pretty much alike.

6th Inter'y by same. If your are acquainted with the handwritings of Francis W. Lea and Wm. Park Lea, please to state whether there is or is not a marked resemblance in them.

Answer. There is.

7th Int. by same. Please to state whether you can determine positively in whose hand is the body of the paper shown you, marked Exhibit O, purporting to be a deed from William P. Lea to John Davis, dated 18 June 1846.

Answer. I could not determine certainly whether it is in the handwriting of William Park Lea or Francis W. Lea, but think it is the handwriting of William Park Lea.

And further deponent saith not. JOHN OSMENT.

2347

No. 10.

Deposition of Luther Wallace. Sept., 1855

Luther Wallace, aged about sixty years, sworn and examined on the part of respondents.

1 Question. Are you acquainted with the east half of the south-west quarter of section fifteen, fractional township four south, and range five east? If so, how long have you known it? Was there or not an account claim on the same, on the 5th day of April, 1842? State all, if anything you may know, on the subject of such claim, if any existed.

Answer. I think so, sir. If I mistake not I moved them in the latter part of the year 1840; I was employed by John Davis to move them, to help build a little mill right below. I then understood there was a chance of holding an occupant, and still held to my claim. I claimed some land on the same disputed 80 that same winter. Well, my daughter, Lucinda Ann, was of age and was there with me. She observed, Pap, we are living here together, and I will hold an occupant on *on* the Murdock quarter, not more than fifty yards from the door, I think. I went to work and worked on both quarters, her's and mine. In the course of that winter I cleared on the two quarters some four or five acres, mostly on hers. Sometime in the spring in 1841, I planted out some 15 or 20 peach trees, I think mostly on the disputed 80, and some apple trees. Well, in the latter part of the year 1841, or in the early part of the year 1842, agreeable to my recollection, I sold my occupant and Lucinda's also, to John Davis, Esq. Well, I understood then from Esq. Davis that he had went or sent to the land office here at Cleveland, and had obtained both pieces of land that the two occupants called for, that was mine and Lucinda Ann Wallace's. In the sale of the occupants I was to clear out so much on the Murdock quarter, and have all that I cleared for three years by giving up a large hewed log house I had put up on the disputed quarter or 80. Well, at the expiration of the three years running out, I give the place up in the full possession of John Davis. I left the place then, and moved up to some property I bought of Elias Davis, close to little Bill Hancock. I think the day that I left the disputed 80, John Davis put Wilson Abercrombie in the same house that I left, and how long Abercrombie remained there I do not know.

2 Question. You will please state if you know who claimed and exercised ownership over the disputed 80 acres of land, if any one, on down to the time John Davis left the country, and when did said Davis leave? Did he sell to any one before he left? If so, how long before he left, and who was it to?

Answer. No one that ever I heard of, but John Davis claimed said land until he sold. I understood that he sold to a mining company. I do not know at what time.

3d Question. You will please state if at the time you sold your

occupant claim to John Davis, there was any other improvement on the 80 acres but the field and house you have spoken of.

Answer. None at all.

4 Question. After your three years had expired, state whether or not John Davis tore down and moved off the lower house you have spoken of: if so, on what land did he move it to?

Answer. He moved it before I left there. He moved it first to the mill quarter, I think, if it was not, it was close to the line. I always thought it was on the mill quarter. He then moved it up the branch on the Murdock quarter.

5 Question. Are you one of the old settlers of that particular region of country now called Ducktown? If so, please state how many persons, giving their names, lived in one mile and a half of the land in dispute, giving their residence, whether north, south, east, or west of said disputed land, on the 5th April, 1842?

Answer. I was not the oldest settler, there was some there before me. Esqr. John Conner lived hardly a mile, I suppose, southeast; Daniel Jenkins lived hardly a mile and a half east, a little north; Jesse Lemmons, I reckon, about two miles near about north; Early Dye west, three-quarters of a mile; Alfred Green a little east of south, about one mile; and John Rogers a little over a mile, west; and John Davis lived near about a south course, about a quarter of a mile; Neil McCoy about a mile and a half, near north course.

6th Question. If John Davis gave you anything besides the benefit of the land for the three years, as you have stated, you will please state how much it was, and in what it consisted.

Ans. He give me fifty dollars for the two occupants. He give forty dollars for the one on the disputed 80, on account of the house, and ten dollars for Lucinda's.

7. You will please state if the occupants you sold to Davis, for the land spoken of, were proved as directed by the laws disposing of the lands in the Ocoee District; if so, name the persons who proved the same, and *and* the justice before whom proven, if you recollect.

Answer. William B. Wallace and Amanda E. Wallace; proven by and before Esqr. John Davis, according to the best of my recollection.

8th Question. Was John Conner a Justice of the Peace at the time you speak of; what is your best recollection as to that?

Answer. John Conner was a Justice of the Peace, agreeable to my recollection, at the same time.

9 Question. After the proving of the occupants, were they assigned or not?

Answer. I assigned mine in my own name, and by Lucinda Ann's order I assigned hers.

10 Question. Is John Davis now dead? State whether these occupant claims were assigned or transferred to John Davis before or after the land fell to one cent per acre in the Ocoee District.

Answer. I understand he is dead. About the time it fell to one

cent per acre, to the best of my recollection, the occupant claims were assigned or transferred.

Cross-examination.

Question 1. How far from where you lived to the Ocoee River? and where does the creek, on which was Davis's mill, run, in reference to the land in dispute, and that immediately north of it?

Answer. I think betwixt a mile and three-quarters to the Ocoee River. The creek runs a little south of west through the mill quarter. The line of the Murdock quarter and the mill quarter will run near the creek, some distance below the mill, agreeable to my opinion, but I don't think will touch the creek.

Quest. 2. When you built the house in 1840, did you know where the true line between sections 15 and 22 was?

Answer. I thought I did from some marked trees.

Quest. 3. In proving the occupancies for yourself and daughter, did you claim quarter sections for each, or only eighths for each, and why?

Answer. On the 80 acres that I held the occupant on. I understood the other 80 on the same quarter was entered before I was there. The one my daughter was on was vacant, and she claimed the whole quarter by the occupant.

Quest. 4. By whom, when, and at what price did you understand the west half of the quarter on which you say your house stood, to have been entered?

Answer. By Frank Lea, I understand; I cannot say at what date, but when I was holding the occupant I understood that Frank had entered that at 12½ cents.

Quest. 5. Had Frank (or Francis W. Lea) entered any other lands in that vicinity previously to that time?

Answer. I am not able to say, sir, for I do not know.

Quest. 6. Did you personally know F. W. Lea at that time?

Answer. I did not.

Quest. 7. Had you then heard that he had ever before that time been in Ducktown?

Answer. I do not know, that I recollect, whether I had or not.

Quest. 8. What is the quality of the land you say you understood had been previously entered by F. W. Lea, as to soil and timber?

Answer. It was so sorry that I did not want it for cultivation, and had a little scrubby timber on it, not a board tree, to my recollection.

Quest. 9. Who informed you that F. W. Lea had entered that piece, and for what particular reason did you understand he had entered it?

Answer. I understood from William Truman, that he was looking at the map, and that Frank Lea had entered the west 80 of the quarter that I held the occupant on, I heard no reason why.

Quest. 10. Were there not many tracts yet mentioned in that vicinity when the price fell to one cent per acre?

Answer. I suppose there were many tracts when the entry fell to one cent.

Quest. 11. What was the relative value of the west and east half of the S. W. quarter of sec. 15; and also the relative value of the east half of that quarter, and the whole of the N. W. quarter of section 22, adjoining?

Answer. Well, I would suppose, if anybody would have wanted to have lived there, the west half was some the best, but as for cultivation neither was much, I assure you. The Murdock quarter was the most valuable for cultivation, on the account of there being spring water on it, and the land some the best, is all I know.

Quest. 12. Was the 80 acres, next to and south of what is now known as the Murdock 80 acres, vacant in 1842, when the lands fell to one cent per acre? and did not your daughter Lucinda Ann claim an occupancy on that piece also?

Answer. I know nothing about that 80 acres, whether it was vacant at time or not, nor did my daughter Lucinda claim any occupant on the 80 acres in the question above asked.

The further taking of Luther Wallace's deposition is continued until Tuesday morning, 8 o'clock.

JOHN H. PAYNE, *Com.*

The taking of the deposition of Luther Wallace continued this Tuesday morning, Sept. 25, 1855, by A. M. Lea, agent for the complainant, William Pinckney Lea, and present, John B. Hoyle, solicitor for the respondents, and the same parties as on yesterday, except George W. Rowles. JOHN H. PAYNE, *Com.*

Ques. 13. Under what title did you understand John Davis to claim the lands in dispute, from 1842 to 1852?

Answer. From the occupant that I sold him.

Ques. 14. Do you know of any claim to the land in dispute by William Park Lea; and if aye, do you know of any sale by him of his claim to John Davis, and when and how did you hear of such sale?

Answer. I do not know of any claim to the land by William Park Lea; I do not know personally of any sale by him of his claim to John Davis; but I heard of such sale, about the time the land office closed, of giving up some land that he had entered, but do not know whether it was this land or not.

Quest. 14. Please to state what business you followed when living in the house sold by you to John Davis, whether you were in the habit of frequent intercourse with said Davis, and when you left that neighborhood.

Answer. I followed farming, and sometimes my trade of a carpenter. As neighbors, nothing more, was so far as our intercourse went. I left that neighborhood, I think, in 1846.

Quest. 15. Do you know one William Watkins, and did you hear of his having charge of cattle in what was known as the Ducktown range, whilst you lived at or near John Davis's mill?

Answer. I knew William Watkins. I was at Mr Watkins' camp in the Frog Mountain range (not Ducktown) where it was said he herded some cattle, but whose I do not know; and if I ever heard, I do not know, until this suit was commenced.

Quest. 14. Please to state the relationship between John Davis, before whom you proved your occupancy as Justice of the Peace, and the John Davis who purchased said occupancy from you; and also the relationship of the witnesses, William B. Wallace and Amanda E. Wallace, to yourself.

Answer. The same man; my own children were William B. Wallace and Amanda E. Wallace.

Re-examination.

1 Question. In your answer to the 14th question, in cross-examination, you say you heard of William Park Lea giving up some land he had entered; to whom did he give it up?

Answer. I do not recollect at this time.

And further this deponent saith not. L. WALLIS.

No. 11.

Deposition of Wilson Abercrombie.

Wilson Abercrombie, aged about 44 years, being next duly sworn and examined deposes as follows:—

Int. by resp'ts sol. Are you acquainted with the handwriting of the late John Davis, dec'd?

Ans. I am.

Int. by same. Look upon the paper now shown you, marked Exhibit A, to the deposition of Elias Davis, and Exhibit B, to the deposition of John F. Hannah, and state from your knowledge of the handwriting of the said John Davis, whether his name as appears to said exhibit is in the handwriting of the said John Davis.

I believe the signature to be his handwriting.

Int. by same. Was he or not an acting justice of the peace for Polk County, Tenn. on the 25th February, 1842, the date of said exhibit?

Ans. I think he was.

And further deponent said not.

WILSON ABERCROMBIE.

No. 12.

Depo. of Yancey S. Bledsoe for Resp'ts. Oct. 1855.

Yancey S. Bledsoe, aged about 38 years, being next duly sworn, deposes as follows:—

1st Int. by resp't's sol. Are you acquainted with the land in dispute now known as Copper Hill? if so, state how long you have known it.

Answer. I became acquainted with John Davis in 1849, as well as I "*retlect;*" "*eveer sens*" 1849 I have known the land.

2d Int. Who was in possession of said land when you first become acquainted with it?

Ans. John Davis.

Int. 3. How long did he remain in possession of it, and who did he deliver the possession to when he went out?

Ans. He "remaind possion of it until he sold to Colwell Maston and Co., the *presised* time I don't now recolect he delivered *possion* to Colwell Maston, Co."

3d Int. Was any portion of said land cleared and in actual cultivation when you first became acquainted with it? if so, state whether or not it had the appearance of having been long in cultivation, and if there were any fruit trees growing upon it, state their size and probable age.

Ans. "Thare was som cleard lan onst and had the apperence of being in cultivation for some time, and thare was some fruit trees on that land an was of som consierble size, I can not tell the age of the trees as I was never close to them."

Int. 4. State whether or not Caldwell, Keith and Co. and their vendees have continued in the actual possession of said land ever since they received it from John Davis.

Answer. So far as I know they have.

5th Int. Were you at any time acquainted with one Jesse Shubird? if so, state when, where and how long you knew him, and also what has become of him.

Answer. I was some acquainted with Sheubird when I first came to that country, about seven years ago. He lived on John Davis' land; where he went to I do not know.

6th Int. Were you acquainted with his general character?

Answer. I was at that time.

7th Int. From that general character would you consider him entitled to credit upon his oath?

Answer. I would not.

8th Int. Were you acquainted with one Crawford Brasswell? and if so, when and how long did you know him?

Answer. I was acquainted with him about seven years ago at Ducktown. I was acquainted with him about two years, I think.

9th Int. Were you acquainted with his general character?

Answer. I do not know that I was.

10th Int. Are you acquainted with the general character of Young Davis and Elias Davis?

Answer. I believe I am.

11th Int. From their general character would you consider them entitled to credit upon their oaths?

Answer. I would.

Cross-examination.

1st Interrogatory by complainant's agent. How, or in what way, did John Davis have possession of the land in dispute?

Answer. He had a part of it in cultivation, was my understanding.

2d Int. by same. When and from whom did you learn that John Davis had a part of the land in dispute in cultivation?

Answer. It was when I first went to that country, in the year 1849. I was at Davis' Mill, and they pointed out a field in cultivation that was said to be John Davis'. I went by the field every time I went to that mill. I recollect one of the men that told me the field belonged to John Davis, and that man was Henderson Conner, who had lived there a year or two before.

3d Int. by same. Were you informed by any of the neighbors at that time on what section or quarter section that field was?

Answer. No, I was not.

4th Int. by same. Do you know on what section or quarter section the field was?

Answer. I do not.

5th Int. by same. Do you know where the lines run between sections 22 and 15 in fractional township 4 S. R. 5 E. of the basis line?

Answer. No, sir.

6th Int. by same. How do you know that the field shown you from the mill was on the land in dispute?

Answer. My understanding it was on the land that took Copper Hill, and I understood that before the time the trade was made between John Davis and Keith, Mastin, Caldwell and Co.

7th Int. by same. How long before John Davis sold the land in dispute to Keith, Mastin and Caldwell, did you understand that the field was on the land now in question?

Answer. It was some months before the trade was made, but I do not recollect the number.

8th Int. by same. What was the size of the field pointed out to you as belonging to John Davis, and which you say was on the land in dispute?

Answer. The precise size I could not tell, but they called it some ten or twelve acres. I do not know whether it was all on the land in dispute, as I do not know how the lines run there.

9th Int. by same. Are you sure that any part of the field was on the land in dispute, as the field was when you first knew it?

Answer. I do not know precisely where the line runs, but my understanding was that a portion of that field was on the land in dispute.

10th. Int. by same. Did you, at any time before the discovery of copper ores in Ducktown, have your attention drawn to the fact whether any part of the field just referred to was or was not on the land now in dispute?

Answer. Not before any discovery of copper ore was made it was not.

11th Int. by same. How far and in what direction did John Davis live from the field just referred to?

Answer. I cannot tell the exact distance he lived, but would suppose he lived between a quarter and half quarter of a mile, and in a south course.

12th Int. by same. Please to state whether John Davis owned several tracts of land in Ducktown with various tenements upon them.

Answer. I think he owned several tracts of land around where he lived, with various tenants on them.

13th Int. by same. Please to state whether the field shown you from the mill as belonging to John Davis, was or was not considered as part of his home place.

Answer. I would consider a part of it on that quarter. Whether it was on the quarter he resided on I do not know, for I do not know where the lines run.

14th Int. by same. How far did the path you say you travelled to Davis' Mill, pass from that part of the field which you say was on the land in dispute?

Answer. The path passed the opposite side of the field by the corner of the field. I would suppose that it was one hundred and fifty to two hundred yards from the cleared land in dispute.

15th Int. by same. Did the path pass the field on the side of the land in dispute or on the opposite side?

Answer. On the opposite side.

16th Int. by same. What was the shape of the field to which allusion has just been made—was long, square, or round?

Answer. It was rather a long shape, narrower at one end than the other.

17th Int. by same. Please to state as nearly as you can how long the field was.

Answer. I do not know that I could tell the exact distance. I would suppose it was some three hundred or three hundred and fifty yards long.

18th Int. by same. Please to state whether Crawford Braswell and Jesse Shubird, named in this deposition, were usually associated with or employed by John Davis and his sons, whilst they lived in Ducktown.

Answer. I do not know that they were employed; I know of James Davis, Sheubird and Brazill being associated, and as for any of the rest I know nothing about it.

19th Int. by same. Please to state whether the general reputation of Elias and Young Davis is or is not improved since the decease of their father.

Answer. I think it is.

20th Int. by same. Please to state whether it is or is not generally

understood that they are both much better off as to property than they were some years back.

Answer. Yes, sir, it is.

21st Int. by same. Please to state whether they have or have not now the reputation of being tricky and unreliable men in their trading.

Answer. I do not know that they have at this time.

22d Int. by same. From your knowledge of the reputation of Elias and Young Davis, would you, four years ago, have believed them on oath in a matter in which they were interested?

Answer. I do not know that I could, four years ago, from my own knowledge of their reputation, have believed them when they were interested.

Re-examination.

1 Int. If they had not been interested would you not have believed them?

Answer. Yes, sir.

2d Int. State, if you know, whether the Davis or some of them did not prefer a criminal charge against one of them, the said Braswell or Shubird; and if so, which one, and whether he did not flee the country and run away in consequence of it.

Complainant by his agent excepts to this question as illegal.

WM. P. LEA,
by his Agent, A. M. LEA.

The commissioner overrules the above exception, and the witness is ordered to answer the above question.

J. H. PAYNE, *Com.*

Answer. I think there was a charge against Brasell, and my understanding was, he run away, and went to North Carolina.

And further this deponent saith not.

YANCEY S. BLEDSOE.

No. 13.

Depo. of Wm. Mills, for Resp'ts. Oct., 1855.

William Mills, aged about 38 years, being next duly sworn, deposes as follows:—

1st Int. by resp'ts sol. Are you acquainted with the land in dispute, being forty acres, now known as Copper Hill? If so, state how long you have known it.

Ans. I am acquainted with the land known as Copper Hill. I have known it since the spring of eighteen hundred and forty-"*foure.*"

2d Int. State how near you have lived to said land, and for what length of time.

Ans. I lived within six miles of Copper Hill for six years, and within three miles for three years, and within about five miles of it about three years.

3d Int. State who has been in the *possion* of said land since you have known, and how those who have been in possession have held it.

Ans. John Davis exercised ownership over it when I first became acquainted with it, and continued to do so, so far as I know, until he sold to Mastin, Keith, and Caldwell, who has claimed it ever since, so *fare* as I know, except the part Nelson Carter *clamd*.

4th Int. State whether or not any portion of said forty acres of land, including Copper Hill, has been cleared, and in actual cultivation; if so, how much, and how long the same has been cleared and cultivated.

There is a portion, said to be on said land, cleared and in cultivation, and was in cultivation in eighteen hundred and forty-four, and appeared to have been in cultivation for some time previous to that time, by the appearance of the land and fruit trees growing thereon; though I am not acquainted with the lines of said land, and do not know it to be in said land, "*onley*" by information.

5th Int. State if you who has had said cleared land in possession and cultivated the same, or had it done since you have known it.

Ans. Luther Wallis cultivated said land when I first became acquainted with it, I think, as the tenant of John Davis; but a short time after I became acquainted with it, Wallis left it, and John Davis had possession of it, after that, until the Copper Hill Company took possession of it.

6th Int. State whether John Davis continued to claim said land as his own until he sold to Caldwell, Keith, and Mastin.

Ans. I never heard of any other person claiming it until he had sold it to Caldwell, Keith, and Mastin.

7th Int. Are you also acquainted with the forty acres adjoining said Polk County copper mine, known as the Nelson Carter forty, or Mary's Mine? If so, how long have you known it?

Ans. I am acquainted with the land, but not with its boundaries. I have known it since the spring of eighteen hundred and forty-foure.

8th Int. State who has been in *possion* of said last mentioned forty acres, claiming it, and exercising ownership over it, since you have known it.

Ans. I think John Davis claimed it when I first became acquainted with it, and it afterwards fell into the possession of Nelson Carter. Carter told me he swopt other lands for it to John Davis.

Int. 9. Did Carter so state to you while he was in possession of it, and claiming it as his own?

Ans. He so stated to me the time he was about selling it to Davises; he said *sompthing* about his titles not being recorded from John Davis to him, and about Davis taking up that title, and making at title to the persons he selling to.

10th Int. State whom he finally did sell to, and whether the purchasers and their venders have been in possession ever since he, Carter, left it.

Ans. It was so stated that he sold it *twise;* the first time to Bryson and Parks, and the second time to Elias Davis, and I think James A. Davis; and I think the Copper Hill Company has exercised ownership over it from a short time after until this time.

11th Int. State if you were a justice of the peace for that civil district, and if so, how long you held said office.

Ans. I was a justice of the peace for the Seventh Dis't for some five or six years, and the land in dispute is in the Eighth Civil Dist.

12th Int. Were you acquainted with one Jesse Shubird, and also with one Crawford Braswell? If so, state how long and when you knew them, and where they went to from that country, if you know, and also where they now live.

Ans. I was acquainted with Jesse Shubird and Crawford Braswell; I knew them, I suppose, some two years; but as to the precise date, I do not recollect; I think between 1847 and 1850; as to where they now are, I do not know.

13th Int. Were you acquainted with the general character of each of them?

Ans. I was, so *fare* as they had formed a *carrector* in that country.

14th Int. From their general character, would you consider either of them entitled to credit on oath?

Ans. I would not.

15th Int. State at what time Carter sold said last mentioned forty acres, and how long the company now claiming it have been in possession of it.

Ans. As to the precise time, I do not now know, but I think from 1852 to 1854, and I think the company now in possession have had possession from a short time after Carter sold *untill* the present.

Cross-examination by Compl't's Sol.

1st Inter. Please state by what title John Davis claimed Copper Hill; was it under the Luther Wallace occupancy?

Answer. My understanding was that he claimed under a title from Park Lea.

2d Int. Did he claim under Park Lea as early as 1844? and if not, tell when he first claimed it, and how he claimed it.

Answer. I heard nothing said about the Park Lea title *untill* or about the time, or shortly after, John Davis had sold to Mastin, Keith, and Caldwell.

3d Inter. Under what title did he claim it when you first knew the land? Did you hear anything said about the Wallace occupancy?

Answer. I do not know under what title he claimed when I first became acquainted with said land; and as to the Wallace occupant, I know nothing about, as the lands was all entered when I became acquainted with said lands.

4th Inter. by same. What year did Luther Wallace move away

from Copper Hill? and also state whether John Davis removed the Wallace improvements off of the land, and placed them on his home place.

Answer. I do not know in what year Luther Wallace did move from said land, though I think it was in 1845 or in 1846; as to his moving the improvements, I do not know whether he did or not.

5th Inter. Do you remember of there having been a house and other improvements on Copper Hill, where Wallace lived? And if so, do you know of *their* being taken away, and when it was done?

Answer. I know of there being a house and other improvements on the land where Wallace lived, but as to ther being removed, I do not know.

6th Inter. Were you frequently about Copper Hill, and how long has it been since you were there?

Answer. I am frequently about Copper Hill. I was there last Sunday.

7th Inter. Were you frequently about Copper Hill from 1848 to 1850, and in sight of where the Luther Wallace house stood? And if so, was the house and other improvements there all that time?

Answer. I was about Copper Hill frequently about the time *aluded* to, but as where the house stands, or *formaley* stood, was out of sight of the mine, I do not whether it was standing at that time or not.

8th Inter. Is not the place where the Wallace house stood an out-of-the-way place, and not frequented much?

Answer. There was a *publick* mill path by the house, though I seldom travelled it, as it was not in my way to pass and repass.

9th Int. Do you know where the boundary lines of Copper Hill are? Can you say certainly whether the Luther Wallace house was on Copper Hill?

Answer. I do not know the *boundrey* lines of the Copper Hill property, though from the distance to lands adjoining on the north-west side, known as the Nash property, I think it must have *bin* on the Copper Hill property.

10th Int. Was not the field or clearing where the Wallace house stood principally, if not all, on what was known as John Davis' home place? State how this was.

Answer. I do not know that there was *eny* distinction made what was his home place or what was not.

11th Inter. Are you acquainted with general character of Young Davis and Elias Davis?

Answer. I am.

12th Inter. From that general character, would you consider both or either of them entitled to credit on oath?

Answer. The people where I became acquainted with their general *carrecter* is *devoided* into two parties. If I believed one party, I could give their oath credit; and if I believed the other party, I could not. Elias Davis was, in 1848, think elected justice of the

peace by a majority of the votes of his district against opposition, which show the largest party in his favor.

13th Inter. Do you intend, by above answer, to convey the idea that you think the voters were governed by their estimate of Elias Davis' character for veracity?

Answer. I am acquainted with the citizens of that district, or was acquainted with them at that time, and I do not think they would have elected a person, believing at the same time that he would swear false.

14th Int. Please state what your opinion is as to both Elias and Young Davis, giving your opinion from their character.

Answer. Their general *carector* has *bin* bad, as above stated, among *som*, and otherwise amongst others; though I think their *carrector* has improved.

14th Inter. Within what time do you think their character has improved?

Answer. Within the last ten or twelve years.

15th Inter. State whether or not, at any time, now, or heretofore, you would have given them full credit on oath. Also whether, at any time, now or heretofore, you would not have given them credit, and please state the date.

Answer. As Elias Davis and myself have had a falling out, I do not feel that I am the proper person to call on to say whether I would or would not believe them on their oaths.

Re-examination.

1st Int. by resp'ts so. Is there not now, and has there not been ever since you became acquainted with that country, the main public road running over the land in dispute, and across the veins of copper that have been opened upon it?

Ans. There has.

And further this deponent saith not. WM. MILLS.

No. 14.

Depo. of Monroe Kirby, for Resp'ts. Oct., 1855.

Monroe Kirby, aged about 32 years, being next duly sworn, deposes as follows:—

1 Int. Are you acquainted with the land in dispute, known as Copper Hill? If so, state how long you have been acquainted with it.

Answer. My first acquaintance was in the year 1848. I have been acquainted with it ever since.

2d Int. State who was in possession of said land, and claiming title to it, when you first became acquainted with it.

Answer. John Davis.

3d Int. State whether or not he continued to hold the possession of said land, and claim it as his own, up to the time he sold it to Caldwell, Keith, and Mastin, and whether they and their vendors have been in possession of it, and claiming it, ever since.

Answer. He continued to hold the possession of said land, and claimed it as his own, up to the time he sold it to Keith, Caldwell, Mastin & Co.; and they and their vendees have been in possession and claiming it, ever since, as well as I recollect. I have heard nothing else.

4th Int. State whether or not there was any portion of said land cleared and in actual cultivation when you first became acquainted, and whether the cultivation of it has been continued up to this time.

Answer. There was some in cultivation at the time I first became *became* acquainted with it, and the cultivation of it has been continued up until this time.

5th Int. State who has cultivated it and controlled it ever since you have known it.

Ans. The first I knew of it being cultivated was by John Davis. Since this company have bought it, they have rented it out, but I do not know who worked it.

6th Int. State if you know whether John Davis was or was not a man who was very watchful of his interests, and looked closely after his property.

Answer. I knew him to be that sort of a man.

7 Int. Were you at any time acquainted with one Jesse Shubird and also one Crawford Braswell? If so, state when and where you first became acquainted with each of them, and how long you knew them, where they removed to, when they left Ducktown, where they next went, and where they now live, so far as you know.

Answer. I think in the year 1844 was the first acquaintance I had with Shubird, in Union County, Georgia. He came into the settlement where I lived, and remained there some three or four months, I don't recollect the exact time, and then left there; and after I came to Ducktown, I heard of him there; I knew him a short time in Ducktown; I knew nothing about him after he left there. I was some acquainted with Braswell when I came to Ducktown, in 1848; I was some acquainted with him from that time until July, and none afterwards.

8th Int. Were you acquainted with the general character of the said Shubird both in Union County, Georgia, and also in Ducktown, Tennessee?

Answer. Yes, sir.

9th Int. From that general character, would you consider him entitled to credit upon his oath?

Answer. No, sir.

10th Int. Do you know under what circumstances the said Shubird left Union County, Georgia, and also *and also* under what circumstances he left Ducktown? If so, state all you know about it.

Compl't by sol. objects to above question because it is to get at special incidents in the history of the person intended to be impeached, instead of requiring witness to merely state his knowledge of general character. A. G. WELCHER, *Sol.*

The commissioner overrules the above objection, and the witness is ordered to answer the question.

JOHN H. PAYNE, *Com.*

Answer. George McClure lived about a mile and a half from where I did in Union County, Geo.; himself and family was away from home on Sunday; when they returned home in the evening they found a pillow slip of flour and a turkey-gobbler missing; they pursued after him and he dropped the turkey-gobbler and he took to the woods; they and I never heard of him any more until I came to Ducktown; I do not know under what circumstances he left Ducktown.

11th Int. Were you acquainted with the general character of said Crawford Braswell in Ducktown where he lived?

Answer. Not very much. I was acquainted with his general character the time that I knew him.

12th Int. From his general character would you consider him entitled to credit upon his oath?

Answer. I do not know whether I could or not. It is doubtful.

13th Int. Are you acquainted with the general character of Elias Davis and Young Davis?

Answer. I have been acquainted with the general character of Elias Davis since 1848. I think I am acquainted with Young Davis' general character. A short time after I first knew him he moved off and was gone; I think he left in the year 1849, and has been back something like two years; has made two crops.

14th Int. From their general character would you consider them entitled to credit upon oath?

Answer. Yes, sir.

Cross-examination.

1st Inter. by compl't's sol. You speak of being acquainted with the land in dispute. Do you know where the line is between section 15 and 22, 4 fr. T. R. 5 E. of the basis line?

Answer. No, sir.

2d Inter. Do you know where the Luther Wallace house stood? and if so, state whether or not it was removed from that place, and who moved it.

Answer. I do not know that I ever knew of any house of that name there. I knew of them of moving a house from above where John Davis lived—an east course. I mean by that that I heard the Davises talking about it.

3d Inter. State how long you lived in Ducktown from the time you first went there; how long you lived away from there before you returned. Did you ever go over the Davis' property and have the lines pointed out to you before this suit was commenced, and did you know of your own knowledge before this suit was commenced of John Davis having any part of Copper Hill in cultivation?

Answer. I moved my effects there in February, 1849; I left there

in July afterwards. Near two months after that time I went back and staid a few days. I was three years away from there, but was back some three or four times in the course of the three years. I never went over the Davis property and had the lines pointed out before this suit was commenced. John Davis told me that he owned about nine hundred acres of land, but the name of Copper Hill was not named while he owned the land; if it was, I never heard it. There was land in cultivation over next to the creek; there was no name attached to it; but I do not know whether it extended up on Copper Hill or not.

Quest. 4. If John Davis included Copper Hill among his lands, can you tell by what title he claimed it?

Answer. No, sir; I cannot.

4th Inter. Do you now live where either of the Davises formerly lived?

Answer. Yes, sir; I live where Elias Davis formerly lived.

5th Inter. Do you know where the Watkins' Cabin formerly stood, and if so, how far was it from where you lived, and how far was it from the road?

Answer. That is a thing I know nothing about.

6th Inter. Did Jesse Shubird live with any of the Davises, and if so, which one, and how long did he live with them?

Answer. I don't know whether he lived with any one of them or not.

7th Inter. Do you know of his living on John Davis' land, and of his being about his house frequently?

Answer. No, sir; I do not.

8th Inter. Did Crawford Braswell live with David Carter, the son-in-law of John Davis, and was he frequently about Davis' family?

Answer. He made his home at David Carter's all the time I knew him.

9th Inter. By what name was the ridge, which bounds the waters of Brush Creek on the west, generally known when you first settled where you now live?

Answer. The ridge along there was not named. There were several little ridges along there that had no name. The first mountain was called Frog Mountain.

10th Inter. How far do you live from Young Davis?

Answer. A mile and a quarter, I reckon.

11th Inter. Have you and he been on a trade about your land lately? and if so, state how he told you he expected to pay for it.

Answer. We have been on a trade. The first payment was due the first day of this month. He told me that Congdon owed him for a wagon and six mules he had sold him. He told me there was a settlement between him and Congdon and Elias Davis when he first talked of buying the land. The settlement was, that they had promised him twenty-five hundred dollars; I had a conversation

with Congdon about this matter, and the conversation was this: I asked him if he thought Young could pay for the land. He told me upon a settlement he would be due Young about a thousand dollars, and he had also promised to loan him a thousand in case he called on him. I then asked him if Young had not a lien on it for something else; he paused awhile and said if Young and Elias come up and acknowledged a certain deed, and said there was a certain sum to pay, but did not say what. Then we wound up, and he said I think you will be safe in making the trade.

The further taking of depositions in this cause is continued until to-morrow morning (Saturday, the 11th Oct. 1856) to 7 o'clock.

J. H. PAYNE, *Com'r.*

Saturday Morning, Oct. 11, 1856.

The taking of depositions continued this morning, the same parties being present as on yesterday.

JOHN H. PAYNE, *Com'r.*

12th Inter. State whether or not you ever heard of either Young or Elias Davis being discredited or their veracity impeached in a court of justice, and if so, when and where.

Answer. I have heard of Young Davis being impeached at Benton, Polk County. I do not think I ever heard of Elias being impeached. It was since I became acquainted with Young Davis that I heard of him being impeached.

13th Inter. Did you ever hear of Young Davis shoeing horses with the shoe turned the wrong way, and that Elias sent them off into Georgia and disposed of them, the shoes being thus placed to elude pursuit?

Answer. I heard the report in the country that the Davis' had done such a thing, but it was not a general report. I just heard it but gave no credit to it.

14th Inter. Is it not generally understood that Young and Elias Davis were frequently engaged in stealing Indian ponies from the Tennessee side and running them then into Georgia and disposing of them, both before and since they settled at Ducktown?

Answer. I cannot tell you anything about that. I have just heard the report.

15th Inter. Did not Elias Davis sell a lot of land to Isaac N. Grier, receive the pay, and under pretence of getting the proper description of the land, deferred the execution of the deed and always refused to give deed or refund the money?

Answer. I recollect that Elias Davis sold him a farm. Mr. Grier told me that Davis went to a certain place with him and pointed out the land; then stated to him I sell you all the land that I own on this side of the river. After this time he sells eighty acres of land joining this land. Davis also stated to me that this land belonged

to Young Davis. He also told me that he had received a letter from Young requesting him to sell this land.

16th Inter. Is not Elias Davis notoriously tricky in trade, and has he not been known to give in land to officers for sale under execution, when it was not his, and he had no title to it?

The respondents except to the foregoing question as irrelevant and imputative, and incompetent; also excepts to 11th, 12th, 13th, 14th, and 15th questions for like grounds, and as counsel for complainant insists on continuing such a course of examination, the question of costs as well as matter of exception, will be respectfully insisted on.

ROWLES & COOKE, *for Resp's.*

The commissioner overrules all the above exceptions, and orders the witness to answer the last question propounded.

J. H. PAYNE, *Commis'r.*

Answer. I have had dealings with Elias Davis ever since I came to the country, and consider myself well acquainted with him. I always found him to be an honourable straight man. I bought land of him when I came to the country first; I had taken a little bond from him and he made me a deed for it before I paid for it, which was not the contract. The contract was that he was to make the deed when the land was paid for. If he is tricky I do not know it.

17th Inter. State what caused Young Davis to leave the country and go off to Arkansas at the time you state he left Ducktown?

Answer. I do not think I can state exactly what did cause him to leave. A short time before he left Ducktown he came to my house about an hour by sun in the evening, and left word for me to go to his house that night, I not being at home at the time. When I came home and got the word, I went to his house; when I got there he was busily engaged loading a shot-gun. He told me what he was loading it with and showed me and told me what he intended to do. He said there was a company of men coming there to take him to the forge and try him on a misdemeanor he had done. I do not know now what it was. He stated that there was John Frater and the Conner family, was going to tie him to Frater's bull's tail and carry him to the forge, and he did not intend to go that way. He said there was a lawful officer at hand, and if he would come he would submit. The next was I told him I did not believe they would come. I likewise went to bed and went to sleep and got up next morning just at daybreak to start home. The dog made a little fuss near the window where I lay, and six men came up; three of them had guns and the other three had nothing that I saw. And when they were not more than fifteen feet from the door I heard Young jump up out of bed and instantly heard a gun snap. The men halted then in a turning position, when his gun fired, and two or three of the men staggered and fell and jumped up and run off, forty or fifty yards. Young then hollowed out, as though the house was full of men, to give him another gun so he could kill them. He fired after them,

then they just cleared out. I believe that was the cause why he left Ducktown.

18th Inter. Is Young Davis a preacher at present in good standing in the church?

Answer. I have heard him preach one time since he came back from Arkansas, and have heard of it three times. I do not consider that he is in good standing in the church.

19th Inter. Has Young Davis lately told you about his having taken from the post office in Ducktown about July last, two letters addressed to James A. Davis, which he opened and read, and finding that they were from A. M. Lea, the complainant's agent, he showed them to Resp'd'ts Caldwell and Congdon, and concealed them from s'd Jas. A. Davis until within the last two weeks?

Answer. Yes, sir, he told me that he had taken the letters out and opened and read them, but did not tell me how long he had kept them away from Jim. He did not tell me the length of time he kept them away from Jim, but said that he had kept them some time. It is only a late thing since I heard of it, about ten days ago.

20th Inter. How far do Young and Jas. A. Davis from each other, and how far do they each live from the post office?

Answer. Eight or nine miles apart. There is two post offices between them. There is one of the post offices one mile and a quarter from Young Davis, and the other three and a quarter.

21st Inter. Are Young and Jas. A. Davis on friendly terms?

Answer. I do not know.

22d Inter. Is not one of these post offices kept by a clerk of Resp'd't Samuel Congdon, and if so, which office?

Answer. Yes, sir, the Copper Mine Office, the one next to where Jas. A. Davis lives.

23d Inter. Is this the same Congden you spoke of in connection with your trade with Young Davis?

Ans. The same Congdon.

24th Inter. What is Jesse Shubird's character, as a man of a lively, frolicksome disposition, and for carrying on practical jokes?

Ans. He is a man that is very fond of it.

25th Inter. Was any effort ever made to prosecute him for interfering with McClure's turkey, and did it pass off as a matter of sport?

Ans. If there was any effort made about it I do not know it. There was a great deal of sport made of it, and a song made about it by Joseph Henson, which he sung there and in Ducktown.

26th Inter. Did you ever know of his oath being impeached in a Court of Justice?

Answer. I was not present, I just heard it.

27th Inter. Tell all the circumstances; that is, who impeached him, and how many witnesses?

Answer. I just heard it as a rumor, and paid no attention to it. I cannot give the number of witnesses nor who they were.

29th Inter. Is your doubt about his truthfulness based as much upon his association with the Davises as anything else?

Answer. No, sir.

30th Inter. How long ago was it that he was impeached, and where was it?

Answer. I reckon it was four years ago and in Ducktown, while he was living there.

31st Inter. Do you know whether witnesses were introduced at the same time to sustain his character?

Answer. I do not.

32d Inter. Is there not a difficulty and hard feelings between you and Crawford Braswell about a land trade?

Answer. There was a land transaction and hard feelings. I do not think he acted honorably about it.

33d Inter. Did you ever know of his being impeached in a Court of Justice?

Answer. No, sir.

Re-examination by Resp'ts' Sol.

1st Int. Was not the settlement between Congdon and Young Davis, above spoken of by you, in which it was stated there would be money due him in relation to getting up and perfecting the title to a piece of land known as the forge property or Cherokee Mine?

Answer. Yes, sir.

2d Int. Did not Young Davis in the same conversation above spoken of by you, in which he stated he had taken the two letters out of the post office, written by A. M. Lea to James A. Davis; did he not in that conversation also state, that he and James A. Davis were in the habit of taking out each other's letters from the post office and reading them, and also that Jim had told him *had told him* to get out any letters he had in the office?

Answer. He told me they were in the habit of lifting each other's letters and reading them. And he also told me that Jim had told him to get out any letters he had in the office.

3d Int. Did he in the same conversation tell you what was in those letters, or what the contents of them were?

Answer. No, sir.

Cross-examination.

1st Int. Was in the first talk with Young Davis about the letters that he told you he and Jas. A. Davis were in the habit of taking out each other's letters, or was it since last Monday?

Answer. Before last Monday. I do not recollect whether it was in the first conversation or not.

2d. Do you not remember that Young Davis got into his shooting difficulty in about the following way, viz.: he had sold a cow and

calf to a man named Foster, and afterwards killed the cow, and prosecuted Foster for stealing and killing the calf?

Answer. Yes, sir.

3d Inter. Was not Young Davis's oath impeached by twenty or thirty witnesses on the trial of Foster before the Justice?

Answer. I think it was impeached, but I do not know the number of men. That was a matter which took place but a short time before I left. I knew very little about it.

By Resp'ts' Sol.

1 Int. Do you know of Young Davis having sold the cow to Foster, or was that a pretext set up by Foster in order to get up the prosecution against Young which led to the shooting affair?

Answer. Young Davis sell the cow and yearling to Foster, and when the time that he was to pay he refused to do it. Foster then killed the yearling and made beef of it. Young then prosecuted him for killing and using it. When it was decided Foster threw him in the cost, at any rate he got the better of him. Young then goes and takes the cow, as well as I recollect. There was one of the Connor family deputized to take him for taking the cow. I do not know whether he killed her or what he done with her. That is just how the difficulty come about, at least I believe it is.

And further this deponent saith not.

MONROE KIRBY.

No. 15.

Depo. of Johnston Lute for Resp'ts. Oct., 1856.

Johnston Lute, aged about 51 years, sworn and examined as a witness on the part of the respondents.

1 Question. Are you acquainted with the east half of the southwest quarter of section fifteen, fractional ship four south, and range five east, in Polk County, Tennessee, or do you know the piece of land known as Copper Hill, in said County?

Answer. I am.

Question 2d. Please state whether or not the mine known as the Polk County Copper Mine, is or not part of the land known as Copper Hill.

Answer. It is.

Question. Please state whether or not the mine known as the Mary's Mine is or not, on the land known as Copper Hill.

Answer. One joining it by that name.

Question. How far are the shafts of those two mines apart, according to the best of your belief?

Answer. I never noticed particularly, but would not suppose they were more than twenty or thirty yards apart.

Question. Do you know whether or not John Davis, deceased, in his lifetime, was ever in the actual possession of the land on which said mines are situated? if so, state the year, if you can, when he first went into possession.

Answer. I moved into Ducktown in 1848 or 1849. I think it was in August, 1848. He then claimed Copper Hill; and was in possession of it, was my understanding of the matter.

Question. Please state whether or not said Davis continued in possession from that time until he sold the same; if so, in what year did he sell, and to whom?

Answer. He continued in the possession, and claimed it as his own until he sold to Keith, Mastin, and Company. The year I do not recollect.

Question. Please state whether or not said Davis rented the land for one or more years, after he had sold to the company, and whether he cultivated a portion of it, until he removed from the country.

Answer. I rented a part of the land from Caldwell the year after the company purchased it. I rented a field that lay betwixt the mill and the mines, or the shaft where it was opened.

Question. Please state whether or not there were any fruit trees growing on the land which you rented; if so, what do you suppose their age at that time to have been?

The complainant by his agent having just come into the office of the commissioner, and finding the respondents engaged in taking this deposition, takes this, his first opportunity to object to taking this and all other depositions at this time, on the ground that there was no existing order of the court, at the time notice was served on complainant's counsel, authorizing the taking of depositions in this cause after the 30th day of last month. WM. P. LEA,
By his agent, A. M. LEA.

Answer. There was Peach trees growing on the land which I rented. I do not know that I am a competent judge of the age of trees, but they were good large trees.

Question. Did you know one Jesse Shubird? if so, how long since he lived in the neighborhood of Ducktown, and if now moved from there, where did he move to?

Answer. I know a man by that name that lived there. I knew him about two or three years. He has removed from there, but I do not know where. It was understood that he went to Georgia.

Question. Were you acquainted with the general character of said Shubird while he lived in that section of country?

Answer. I believe I was.

Question. From that general character, would you have believed him when on oath?

Answer. I could not, sir.

Question. Were you acquainted with one Crawford Braswell? if so, how long since, where did he then live, where does he now live, if you know?

Answer. I became acquainted with him about eight years ago, thus continued my acquaintance with him for three or four years.

He then went from there to North Carolina, Cherokee County. He left there, I learned, and went to Chattanooga, but I have not been acquainted with him any since.

Question. Were you acquainted with the general character of said Braswell?

Answer. It was in that neighborhood—the Ducktown neighborhood.

Question. From that general character, is he not entitled to credit on oath?

Answer. From the general character, while he lived there, I would have to believe him on oath.

Question. Do you know Elias Davis, and Young Davis, are you also acquainted with their general character?

Answer. I know them both; believe I am tolerably well acquainted with their general character.

Question. From that general character, are they or not entitled to credit when on oath?

Answer. From the general character some seven or eight years ago, I could not say that I could give them credit on their oath, so far as I was acquainted with it, but what I know of them men myself, being personally acquainted with them, I could give them credit on their oaths, and agreeable to their character, for the last three or four years back, I could give them credit so far as *as* I have heard.

The complainant was present at the examination of the above witness, and his agent, A. M. Lea, and were both asked if they wished to cross-examine, and refused so to do.

J. H. PAYNE, *Com.*

And further this deponent saith not.

his
JOHNSTON + S. LUTE.
mark.

No. 16.

1*st Depo.*

Deposition of George M. Coleman. Dec'r 19, 1855.

George M. Coleman, aged about 40 years, being next duly sworn, deposes and says as follows:—

Question 1 by respondent's sol. If you assisted John F. Hannah, whose deposition has just been taken in this cause, to measure the distance from Copper Hill, in Ducktown, by the old Indian trail, to where Watkins had a camp for the purpose of herding cattle on said trail, please state how far it is from Copper Hill to where the Watkins' camp stood.

Ans. I assisted Hannah in measuring the distance from Copper Hill to the Watkins cabbin. It is eight miles and a half, and sixty-five poles.

Complainant is present by his agent, A. M. Lea, and declines to cross-examine. A. M. LEA, *Agent.*

And further this deponent saith not.

GEORGE M. COLEMAN.

No. 17:

2d Depo.

Depo. of Geo. M. Coleman for Resp'd'ts. Oct., 1855.

George M. Coleman, aged about 40 years, being next duly sworn, deposes as follows:—

1 Int. Are you acquainted with the land in dispute, now known as Copper Hill? If so, state how long you have known it.

Complainant, by his sol., waives all objection to the taking the deposition of the above witness at this time so far as notice is concerned, but objects to taking the deposition of said witness because his deposition has heretofore been taken by resp'ts in this cause.

A. G. WELCKER, *Sol.*

The commissioner overrules the above objection, and the witness proceeds to answer the above question.

JOHN H. PAYNE, *Com'r.*

Answer. I am acquainted with the land now in dispute, known as Copper Hill. I known it twelve years.

2d Int. State who has been in the actual possession of said land, claiming it and exercising acts of ownership over it, since you have known.

Answer. John Davis, until the sale to Caldwell, Keith, Mastin & Company. The Company has had it in possession and have been renting it from one to another ever since.

3d Int. State whether any portion of said land was cleared and in actual cultivation when you first become acquainted with it. If so, state how much, and whether said Davis continued to cultivate the same or have it done until he sold to Caldwell, Keith & Mastin, and whether they have had it cultivated ever since.

Answer. A portion of this land was cleared and in cultivation twelve years ago, and buildings and fruit trees on the same. Some twelve or fifteen acres was cleared and in one field, but I do not know whether the whole of was on this forty or not. And said Davis continued to cultivate the same or have the same cultivated until he sold to Caldwell, Keith, Mastin & Co., and they have had it cultivated since. I have seen it frequently myself.

4th Int. State also if you are acquainted with the 40 acres, known as the Nelson Carter property, or Mary's Mine; and, if so, how long you have known it. Also state who has been in possession of it and claiming it since you have known it.

Answer. I cannot say that I am particularly acquainted with that land. I know where the Mary's Mine is, and have known it as

long as the other, but not know particularly about the lines. I do not know who has been in possession of it.

5th Int. State, if you know, when the Mary's Mining Company did the first work upon said land.

Answer. I think they commenced work there after they struck copper on Copper Hill, some three or four years ago.

6th Int. State, if you know, whether Nelson Carter was at any time in possession of said land and claiming it; and, if so, under whom did he claim to have derived possession and title?

Answer. I think he was in possession and claiming it. I can't say who he got the land from. It seems to me he got it from some of the Davises, but I would say in the positive.

7th Int. Has there ever been but one Nelson Carter lived in that country, to your knowledge?

Answer. Not that I know of.

8th Int. If you were ever acquainted with one Jesse Shubird, and also with one Crawford Braswell; if so, state when, where, and how long have you known them.

Answer. I knew both the men. I knew them in Ducktown, Polk County. I suppose it is some five, six or seven years since I became acquainted with them. They came there and remained in Ducktown two or three years and then left, and I do not where they went only from hearsay. I understood they were in and about Chattanooga.

8th Int. Were you acquainted with the general character of each of them?

Answer. I reckon I was at that time.

9th Int. From their general character, would you consider either of them entitled to credit when upon oath?

Answer. This man, Shubird, I could not. I do not that I could discredit Braswell from his general character.

Cross-examination.

1st Inter. Do you know the boundary lines of Copper Hill, so as to tell what part, if any, of the twelve or 15 acre field you speak of is on the Copper Hill?

Answer. I know enough to know that the houses and orchard is on the Copper Hill part. I do not know the lines around the whole tract. I would say that the Copper Hill took about two-thirds of the cultivating land of that field.

2d Inter. When and how did you first come to know any of the lines of Copper Hill?

Ans. By being with the surveyors running out adjoining lands. It has been some seven or eight years ago.

3d Inter. Has not the field you speak of been enlarged in the direction of Copper Hill since you first knew it?

Answer. Yes, sir, it has.

4th. How large was it when you knew it first, and when was it enlarged?

Answer. When I first knew the field there was some twelve or fifteen acres, and there is more now in consequence of their clearing scraps toward Copper Hill. They have been clearing turnip patches and setting the fence out gradually for the last six or seven years.

5th Inter. By what title or right did John Davis claim the Copper Hill property?

Answer. Because he owned the land, I reckon. I do not know whether he entered the land or bought it second handedly. At my first acquaintance with the piece of land it was called the Luther Wallace occupancy.

6th Inter. At what time did you first hear of this land being entered by a man named Lea; and when did you first hear of Davis having a deed from Lea?

Answer. I don't know that I ever heard of it until this suit came up of Caldwell, Keith, Mastin & Co.

7th. Do you remember when the Wallace improvement was removed; and, if so, who did it?

Answer. The first houses that Wallace lived in have been moved some seven or eight years. I think John Davis had it done further towards Copper Hill, on the same land.

8th Inter. Do you know of this same Wallace house being removed about the year 1847 or 1848, or at any other time, and put up at John Davis' residence or home place?

Answer. No, sir.

9th Inter. How many buildings were then at the Luther Wallace improvements?

Answer. There was one *cabbin*-house and two sheds built to the same house, one at the end and one at the side, and a corn crib.

10th Inter. State whether or not you ever knew of Crawford Braswell being prosecuted while he lived at Ducktown; and, if so, state what it was for.

Answer. I knew of a true bill being found against him. If my recollection serves me right, Isaac Smith was an officer, and arrested David Carter, and summoned Braswell as a guard, and he refused to act and went off, and Smith returned him to the Grand Jury for that.

Re-examination by Resp'ts' Sol.

1 Int. State whether or not there was not a part of the 12 acre field, above spoken of as being cleared and in cultivation when you first knew it, upon the land known as Copper Hill?

Answer. Two-thirds of the field.

Re-examined.

1 Question. You will please state if the land, on which the Mary's Mine is situated, is the same piece of land relative to which John C. Bryson and Jabel F. Park filed a bill in the Chancery Court at Cleveland, Tennessee, against Elias Davis, John Davis, and Nelson Carter & Co.

Answer. My understanding it is the same piece of land.
And further this deponent saith not. G. M. COLEMAN.

No. 18.

1*st Depo.*

Depo. of James H. Leming for Resp'ts. Jan'y, 1856.

James H. Leming, a witness for respondents, aged about 34 years, by consent of parties being next duly sworn according to law, deposeth as follows:—

Question by resp'ts' sol. State how long you have lived in Ducktown.

Ans. I suppose I could call it my intended home since July, 1840.

2d by same. If you know what year William Watkins herded cattle in the mountains west of Ducktown for Lea & Maples, state what year it was, and how you know that fact.

Ans. In 1843 there were cattle kept there by Watkins, to the best of my recollection, said to be Lea & Maples'. In 1843 I helped my father pack his bread corn, a part of it from Greasy Creek; in January, 1844, I was married, and makes me have a better recollection of the date.

3d by same. If you know anything about the cattle being run out of the mountains by the bear skin, state what year that was in.

Ans. To the best of my recollection the report was it was in 1843, but I am not right certain.

Cross-examination.

1st Interrogatory by complainant's agent. Did Watkins keep cattle in the mountains more than one year?

Ans. I do not recollect.

2d Int. by same. Who told you that the cattle kept by Watkins in 1843 were Lea's & Maples'?

Ans. My brother for one. I don't recollect anybody else.

3d Int. by same. Did Watkins keep cattle for any other persons besides Lea & Maples?

Ans. I do not know.

4th Int. by same. Were you in the habit of hunting in the mountain west of Brush Creek in 1842?

Ans. But a few times I was over in that year. I cannot tell how many.

5th Int. by same. If you saw any sign of cattle in the range near or west of Brush Creek in 1842, please to state where you saw it.

Ans. I don't think I ever saw any further west than a mile in that year from where William Kimsey now lives on Brush Creek.

6th Int. by same. Please to state whether Henderson Smith ever told you where the bear was killed whose skin was put on one of the cattle to run them out of the range.

Ans. He never did.

7th Int. by same. Was it generally understood that the cattle

Answer. When I first knew the field there was some twelve or fifteen acres, and there is more now in consequence of their clearing scraps toward Copper Hill. They have been clearing turnip patches and setting the fence out gradually for the last six or seven years.

5th Inter. By what title or right did John Davis claim the Copper Hill property?

Answer. Because he owned the land, I reckon. I do not know whether he entered the land or bought it second handedly. At my first acquaintance with the piece of land it was called the Luther Wallace occupancy.

6th Inter. At what time did you first hear of this land being entered by a man named Lea; and when did you first hear of Davis having a deed from Lea?

Answer. I don't know that I ever heard of it until this suit came up of Caldwell, Keith, Mastin & Co.

7th. Do you remember when the Wallace improvement was removed; and, if so, who did it?

Answer. The first houses that Wallace lived in have been moved some seven or eight years. I think John Davis had it done further towards Copper Hill, on the same land.

8th Inter. Do you know of this same Wallace house being removed about the year 1847 or 1848, or at any other time, and put up at John Davis' residence or home place?

Answer. No, sir.

9th Inter. How many buildings were then at the Luther Wallace improvements?

Answer. There was one *cabbin*-house and two sheds built to the same house, one at the end and one at the side, and a corn crib.

10th Inter. State whether or not you ever knew of Crawford Braswell being prosecuted while he lived at Ducktown; and, if so, state what it was for.

Answer. I knew of a true bill being found against him. If my recollection serves me right, Isaac Smith was an officer, and arrested David Carter, and summoned Braswell as a guard, and he refused to act and went off, and Smith returned him to the Grand Jury for that.

Re-examination by Resp'ts' Sol.

1 Int. State whether or not there was not a part of the 12 acre field, above spoken of as being cleared and in cultivation when you first knew it, upon the land known as Copper Hill?

Answer. Two-thirds of the field.

Re-examined.

1 Question. You will please state if the land, on which the Mary's Mine is situated, is the same piece of land relative to which John C. Bryson and Jabel F. Park filed a bill in the Chancery Court at Cleveland, Tennessee, against Elias Davis, John Davis, and Nelson Carter & Co.

Answer. My understanding it is the same piece of land.
And further this deponent saith not. G. M. COLEMAN.

No. 18.

1*st Depo.*

Depo. of James H. Leming for Resp'ts. Jan'y, 1856.

James H. Leming, a witness for respondents, aged about 34 years, by consent of parties being next duly sworn according to law, deposeth as follows:—

Question by resp'ts' sol. State how long you have lived in Ducktown.

Ans. I suppose I could call it my intended home since July, 1840.

2d by same. If you know what year William Watkins herded cattle in the mountains west of Ducktown for Lea & Maples, state what year it was, and how you know that fact.

Ans. In 1843 there were cattle kept there by Watkins, to the best of my recollection, said to be Lea & Maples'. In 1843 I helped my father pack his bread corn, a part of it from Greasy Creek; in January, 1844, I was married, and makes me have a better recollection of the date.

3d by same. If you know anything about the cattle being run out of the mountains by the bear skin, state what year that was in.

Ans. To the best of my recollection the report was it was in 1843, but I am not right certain.

Cross-examination.

1st Interrogatory by complainant's agent. Did Watkins keep cattle in the mountains more than one year?

Ans. I do not recollect.

2d Int. by same. Who told you that the cattle kept by Watkins in 1843 were Lea's & Maples'?

Ans. My brother for one. I don't recollect anybody else.

3d Int. by same. Did Watkins keep cattle for any other persons besides Lea & Maples?

Ans. I do not know.

4th Int. by same. Were you in the habit of hunting in the mountain west of Brush Creek in 1842?

Ans. But a few times I was over in that year. I cannot tell how many.

5th Int. by same. If you saw any sign of cattle in the range near or west of Brush Creek in 1842, please to state where you saw it.

Ans. I don't think I ever saw any further west than a mile in that year from where William Kimsey now lives on Brush Creek.

6th Int. by same. Please to state whether Henderson Smith ever told you where the bear was killed whose skin was put on one of the cattle to run them out of the range.

Ans. He never did.

7th Int. by same. Was it generally understood that the cattle

were run out of the range by some person or persons residing in Ducktown?

Ans. I never knew.

8th Int. by same. Were not the people of Ducktown greatly opposed to having cattle driven from below the mountains into their range?

Ans. I don't recollect of hearing much said about it at that time. There was not many cattle in the range about where I lived at that time.

9th Int. by same. If you were acquainted with the several occupants who lived in the house formerly occupied by Luther Wallace, on the west side of Davis' Mill Creek and above the mill, please to state whether said house has been without a tenant at any time between the year 1846 and 1852.

Ans. I was acquainted with some of them, and all, I suppose. The house has been vacant, but whether a whole year at a time or not I don't know. The house has been moved from where it formerly stood when Wallace occupied it.

10th Int. by same. Was there any other dwelling house on the property now known as Copper Hill, but the Wallace house, before the sale of that property by John Davis to Keith, Mastin, & Caldwell?

Ans. I don't think there was; there might be, though I don't recollect for certain how it was; I don't know exactly how every line runs; it may be possible that there were some others.

11th Int. by same. In what direction and how far was the Wallace house moved from where it originally stood?

Ans. I reckon northeast, about three hundred yards, I would suppose.

12th Int. by same. Please to state where you lived, reckoning from John Davis's mill, when the Wallace house was moved?

Ans. I suppose about a mile and a half, about a north course.

13th Int. by same. Were you in the habit of passing near to the Wallace house on going to Davis's mill?

Ans. I was.

14th Int. by same. If John Davis claimed the property where the Wallace house stood before its removal, please to state under what title.

Ans. I don't know what title he claimed it under.

And further this deponent saith not.

JAMES H. LEMING.

No. 19.

2d Depo.

Depo. of James H. Leming for Resp'ts.

James Lemmons, aged about 34 years, being next duly sworn, deposes as follows:—

Compl't, by sol., excepts the taking of the deposition of said

witness, because his deposition has heretofore been taken in this cause by resp'ts, which said exception is overruled, and the witness permitted to be examined.

JOHN H. PAYNE, *Com'r.*

1 Int. Were you at any time acquainted with one Jessee Shubird, and also with one Crawford Braswell? if so, state when, where, and how long you were acquainted with them.

Answer. I was acquainted with them both. I do not recollect, but I think, between 1844 and 1848. It was in Ducktown. I have not been personally acquainted with them more than four years, I reckon.

2d Int. Were you acquainted with the general character of each of them while they lived in Ducktown?

Answer. I was.

3d Int. From their general character, would you consider them, or either of them, entitled to credit when upon oath?

Ans. I could not.

4th Int. State, if you know, under what circumstances Crawford Braswell left Ducktown.

Ans. I think he was indicted and bound to court, give security and left.

5th Int. State, if you know, by whom he was indicted.

Answer. By Isaac Smith, of Polk County, is my information.

6th Int. State, if you know, where he went when he left Ducktown.

Answer. I do not where he went to.

7th Int. State if you know of his living in North Carolina after he left.

Answer. I do not recollect at this time. I do not recollect of his being there, but heard of his being there.

Compl't does not name his general objection to this witness, and objects specially to 4th Interrogatory, because it calls for particular facts constituting general character, and proceeds to as matter of safety to.

Cross-examination.

1st Inter. Have you not been taking great interest in this suit, and offering to bet money on the result of it?

Answer. No, sir, I have not; I am not a man that ever bets any.

2d Inter. Did you not at Sutten Miller's, on Copper Hill, on the 4th of this month, say to A. M. Lea, agent of compl'ts, that you would wager $1000 with him that compl't would never get the land in dispute, or words to that effect?

Answer. Him and me had some talk about it, but I don't know that I offered to bet. I might have told him that if I was betting man. I do not have any recollection of saying anything about betting at this time.

3d Inter. Did you not say in same conversation that you had

learned from resp't, Caldwell, that compl't had stated in his bill that he had salted his cattle on Copper Hill, but that you knew said allegation to be a d——d lie, because you had been killing bucks there at the time, or words to that effect?

Answer. The conversation I told him I had learned from somebody, I don't know who, that that was stated in the bill. I do not recollect of mentioning Caldwell's name in that information. I do not think that I ever said that I knew that to be a damned lie. I told him I had been killing bucks there in 1842 or 1843, as well as I recollect.

Quest. 4th by same. Did not said agent at same time ask you for the names of persons who lived about Copper Hill from 1845 to 1850, and you replied that you would not give them without pay?

Ans. Not that I recollect.

Question 5th by same. Did not said agent at said time ask you where one Levi Holloway lived, and you told him Holloway had gone to California, and then some other person told the agent where Holloway lived, some few miles from where you live?

Answer. I have no recollection of his asking me the question or telling anything about it.

6th Inter. Did you not state in same conversation that you believed any man would swear a lie?

Answer. No, sir.

7th Inter. Did you ever know of Crawford Braswell being impeached in a court of justice?

Answer. I do not recollect at this time of his being impeached.

Re-examination by Resp'ts' Sol.

1 Int. State how the conversation between you and A. M. Lea, compl't's agent, above referred to, was brought about.

Answer. I do not recollect now, we were sitting talking some, and I do not recollect how it first came about.

And further this deponent saith not.

J. H. LEMING.

No. 20.

1*st Depo.*

Deposition of John F. Hannah for Resp't. Dec'r, 1855.

John F. Hannah, aged about 59 years, being next duly sworn, deposes as follows:—

Question 1 by respond'ts' sol. Please state if you are a surveyor by profession, and assisted in surveying the Ocoee District.

Ans. I was one of the surveyors that surveyed out the Ocoee District.

2d by same. Are you acquainted with the old Indian trail running from the Hiwassee River to Ducktown? and if so, did you know where William Watkins had a camp on or near said trail about the year 1842, for the purpose of herding cattle?

I was acquainted with a trail from Ducktown running to Hiwassee River, near to the place where Elisha Dodson now lives, and I knew where Wm. Watkins had a little cabbin or camp some years back, the date not now recollect, where he herded the cattle.

3d by same. If you have recently measured that trail from the land in dispute now known as Copper Hill, in Ducktown, to where the Watkins camp stood, state when you measured said trail, how you measured it, and what is the distance from Copper Hill to the place where said camp stood.

Ans. I went with Mr. Coleman about two weeks since, and we measured from Watkins camp to Kerby's, along the old trail, and from Kerby's to the Polk County shaft; we measured along the waggon road; the whole distance was eight miles and a half, and sixty-five poles, by the surveyor's chain.

4th by same. State how far it is from Kirby's, where Elias Davis used to live, to the Watkins camp.

Ans. I do not now recollect the precise distance from the camp to where Davis lived, but it was very little under five miles.

5th by same. State if there are any mountains; and if so, describe how many, and what sort of mountains the trail crosses between the old Watkins camp and the Kirby place.

The camp was at the west side of a mountain, at the brink of the mountain it measures one mile and two chains, to a little creek or stream that is called Rock Creek, there is two or three spurs or hills that the trail crosses before it reaches the leading Frog Mountain, the trail crosses that mountain where it goes out of the mountains, to the place where Elias Davis once lived, now known as Kirby's place.

6th by same. State whether or not the Watkins camp was situate in the region of country known as Ducktown.

Answer. I never understood it to be in the region of Ducktown, but it was understood to be in the region of the Frog Mountain.

7th by same. Were you well acquainted with the country and the camp at and about the time Watkins herded cattle there? if so, state whether or not the camp was then understood to be in Ducktown.

Ans. I was acquainted with the country, and was frequently passing the trail. I never understood that part of the mountains to be designated or known as any part of Ducktown.

Cross-examination.

1st Interrogatory by complainant's agent. Please to state the distance from the Tennessee Mine, on the school section, to the nearest point where you measured to the lands known as the Mary's Mining Company's lands.

Answer. I do not recollect the precise distance from Congdon's shafts to the nearest point where we struck the Mary's Mining property, but it was something like three-quarters of a mile.

2d Int. by same. What is the distance by the turnpike, as you measured it from Congdon's, or the Tennessee Mines, to the Kirby place?

Answer. I did not take any notice of the precise distance between Kerby's and Congdon's on the Tennessee River, as I was not expecting to be called upon for any other distance than from the Polk County Mine to Wadkins camp.

3d Inter'y by same. Please to state, as nearly as you can, the distance from Kirby's to Rock Creek, by the old trail.

I cannot give the precise distance, but it is a little under four miles.

4th Int. by same. Please to state whether there is a range of mountains running from Greasy Creek eastwardly between Hiwassee and Ocoee Rivers, which divides the waters of those rivers; and if so, state by what name that ridge or mountain is generally known.

Answer. There is a high ridge or mountain that runs from the head of Greasy Creek in a east direction dividing the waters of the two rivers, Ocoee and Hiwassee, and continues to divide the waters as far as the North Carolina line, which ridge has been known by or called the divide.

5th Int. by same. Please to state whether the Watkins camp is on the north or south side of the "divide" last named by you.

Answer. It is on the south side of the divide.

6th Int. by same. How far from the Watkins camp in a direct line to Thomas Kimsey's, where Henderson Smith formerly lived on Brush Creek?

Answer. It is about four and a half miles on the land line from Wadkins camp to where Thos. Kimseys lives on Brush Creek.

7th Int. by same. By what name do you designate the mountain which appears to be divided by the Ocoee River below the mouth of Rock Creek, particularly that part on the north side of the river.

Answer. The mountain that is cut through near the mouth of Rock Creek running north and south, I have known and called it the Little Frog Mountain.

8th Int. by same. If there is in the region about where Watkins had his camp, a mountain known as the "Crooked Mountain," please to describe carefully where said mountain lies.

Answer. There is a part of the mountain that extends from or near to a place known as the Bear Wallow, and extends north to the Hiwassee River, which mountain I have heard the hunters call the Crooked Mountain.

9th Int. by same. Please to state whether there is a mountain range traversing the country from what is called the Unaka or Smoky Mountain, north of the Hiwassee River, crossing the Hiwassee and Ocoee Rivers, or rather intersected by them, which mountain is generally understood to be a continuation of the main Smoky

Mountain, and is cut by the Ocoee River at and below where John Defreese lately lived.

Answer. There is a range of mountains that runs nearly north and south, which extends clear across the Ocoee District, which chain of mountains is cut through by the Hiwassee and Ocoee River.

I do not know how they range with the Unaka or Smoky Mountain. It is cut by the Ocoee River between where Defriece lives and Kirbeys, at the mouth of Brush Creek.

10th Int. by same. If you have at any time heard either of the respondents in this cause speak of the alteration in the grant No. 5744, covering the land in dispute, and the record of said grant in the office of the register of the Ocoee District, please to state by whom, when, and what *what* said.

Answer. I do not recollect of hearing either of the parties say anything about any alterations in their grants.

11th Int. by same. Do you recollect having met Albert M. Lea, Sr., at Ducktown, in the month of September, 1854, and showing him where the land in dispute lies, and giving him the names of persons residing thereon?

Answer. I recollect a young man by the name of Lea came to Ducktown, and got me to go and show him the lands, he called on the persons at the several cabbins and took down their names.

12th Int. by same. Did you not at that time, or at a subsequent visit of said Albert M. Lea, Jr., say to him that you had heard Thomas H. Calloway say, that he would bet a thousand dollars that Frank Lea (meaning Francis W. Lea) had made the alteration in the record of grant No. 5744, covering the land in dispute.

Answer. I do not recollect of ever hearing Calloway say that there was any alteration nor I do recollect of telling Young Lea any such thing.

13th Int. by same. Have you had in your possession, during the last week, a list of witnesses to be examined on behalf of complainant at Benton, during the present week?

Answer. I have not had any list of witnesses in my possession, nor I have not seen any within the last month.

And further this deponent saith not.

JOHN F. HANNAH.

No. 21.

2d Depo.

Deposition of J. F. Hannah. February, 1857.

John F. Hannah, aged about years, being first examined, deposes as follows:—

Question by respondents' sol. Were you acquainted with the late John Davis, Esq., in his lifetime; if so, have you seen him write and are you acquainted with his handwriting?

Ans. I was acquainted with John Davis in his lifetime, and I

have seen him write, and am somewhat acquainted with his handwriting.

Int. by same. Look upon the paper now shown you, marked on the margin of the back Exhibit A, to the deposition of Elias Davis, and also Exhibit B, to this your deposition, and state, from your knowledge of the handwriting of said John Davis, dec'd, whether his name as it appears to said paper is in the proper handwriting of the said John Davis.

Ans. I believe it is in his handwriting.

Int. by same. Have you in your possession any paper signed by said John Davis, dec'd, if to which you saw him sign his name? if so, you will please exhibit such paper to this your deposition.

Ans. I have in my possession a paper that I was present at the signing of said paper, and I saw John Davis sign his name to it as justice of the peace, which paper I here exhibit, marked exhibit C, to this my deposition.

Int. by same. State whether or not said John Davis, dec'd, was an acting justice of the peace in and for Polk County, on the 25th day of February, 1842, the date of said Exhibit A to Elias Davis' deposition, and B to this deposition.

I know he was a justice of the peace for several years; he was elected when our country was first organized, which was in the last of 1839 or in the first of 1840, and according to my recollection at this time, he was acting as a justice of the peace in 1842.

Int. by same. State whether or not Young Davis, one of the subscribing witnesses to said Exhibit, is the son of said John Davis, dec'd, and Matilda Davis, the other subscribing witnesses to said exhibit, is the wife of said Young Davis. Also state whether said John Davis was the same man from whom Keith, Mastin and Caldwell purchased the property in dispute, now known as the Polk County Mine.

John Davis was the reputed father of Young Davis, and Young Davis's wife's name is Matilda Davis, and John Davis was the man that sold his possessions in Ducktown to Caldwell, Keith and Mastin.

And further deponent said not.

JOHN F. HANNAH.

Exhibit A to Elias Davis' Depo.

ATHENS, TENN., Jan'y 12th, 1857.

N. GAMMON, ESQ., Knoxville, Te.

Dear Sir: I received by the hands of my father the copy of one order made in the Lea case; but there is another order allowing us to take testimony to prove the signature of John Davis to the occupant claim of Luther Wallace. You will please send me a copy of this order and the original occupant claim enclosed to me by letter to Athens.

You will find the old claim attached to the deposition of Elias Davis on file.

It is important for us to have these papers soon, and we would like to have them this week. Since I think of it, if you would hand the papers to Frank Ragsdale in the E. T. and G. R. R. office, he would bring them safely to me next Saturday.

Very respectfully,
A. CALDWELL.

N. GAMMON, ESQ., *Cl'k, &c.*

"*Exhibit C to the Deposition of John F. Hannah.*"

BENJAMIN MANN, *Comm.*

STATE OF
County of

Know all men by these presents, that whereas—

"Now know ye that I, Thomas Jenkins, only heir at law of Jeremiah Jenkins, have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute, and appoint irrevocably, my true and lawful attorney for me in my name to locate, agreeably to the provisions of law, my aforesaid military land warrant, No. 27483, for one hundred and sixty acres, issued on the 31st day of March, 1847, and to demand and receive from the United States General Land Office the patent for the land so located in my name, and in my name to sell and dispose of the land so patented, to grant and convey the same in fee simple absolutely assigning the said patent and all my right and title to and in the same for such price or sums of money, and to such person or persons as my said attorney shall fit and convenient, hereby ratifying and confirming and allowing all such sales, disposals, grants, conveyances, assignments, as shall at any time hereafter be sealed and executed by my said attorney, touching or concerning the premises. Also for me and in my name to demand and receive and receipt for the sum or sums of money to be paid in consideration for said land, and said sums for said land and the appurtenances thereon to the exclusion of all others from the same rights and privileges and vesting them solely and irrevocably in my said attorney.

Hereby binding my heirs, administrators and assigns to perpetual adherence to all the powers herein and above conferred upon my said attorney, and rights herein vested in him.

In testimony whereof I have hereunto set my hand and affixed my seal this third day of May, and in the year of our Lord 1847.

his
THOMAS + GINKINS. [SEAL.]
mark.

Signed, sealed, and delivered in presence of—
JOHN DAVIS, *S. S. J. P.*

Attest,
DAVIS GINKINS,
JAMES A. DAVIS.

STATE OF TENNESSEE,
County of Polk.

Be it known, that before me, a justice of the peace in and for the aforesaid county of the aforesaid state, personally appeared Thomas Jenkins above named, and acknowledged the foregoing power of attorney to be his own free act and deed for the purposes therein set forth, and desired it to be so recorded.

In testimony whereof I have hereunto set my hand this third day of May, and in the year of our Lord 1847.

JOHN DAVIS, *Justice of the Peace.*

STATE OF TENNESSEE,
Polk County.

I, James Parks, Clerk of the County Court of Polk County, do certify that John Davis, Esq., whose signature appears to the forgoing certificate, is and was at the time of signing the same an acting justice of the peace for my county duly commissioned and qualified according to law, and that his signature appears in his own proper handwriting, and that faith and credit is due his official signature.

Given under my hand and seal of office, at office in Benton, this 15th day of May, 1847. JAMES PARKS, *Clerk.*

Clerk's fees 50.

No. 22.

Deposition of Benjamin C. Dugger for Resp'ts. Oct., 1855.

Benjamin C. Dugger, aged about 42 years, being next duly sworn, deposes as follows:—

1st Int. by Resp'ts' sol. Are you acquainted with the land in dispute, now known as Copper Hill; if so, how long have you known it?

Answer. I am acquainted with the land, and have known it a little the rise of nine years.

2d Int. Who was in possession of said land when you first became acquainted with it?

Answer. When I first became acquainted with it, the lot that run then to Copper Hill, John Davis, deceased, was exercising ownership over it. He was also in possession of it. The other lot that the meeting house was on Nelson Carter was exercising ownership over it, and claiming it when I first came to the country.

3d Int. State, if you know, whether or not Nelson Carter came into possession of the last mentioned lot under John Davis, dec'd.

Answer. Carter stated to me that he had swapped another lot to Mr. Davis for the land.

4th Int. State whether or not he stated that to you while he was in the possession of said lot, and claiming it as his own.

Answer. He said that to me while he was claiming it.

5th Int. State how long John Davis continued in possession of the forty acres, including Copper Hill.

Answer. He continued in possession until he sold to Mr. Caldwell and company, so far as I know.

6th Int. State whether or not there was a portion of said lot cleared and in actual cultivation during all that time.

Answer. There was a portion of it in cultivation. I rented one year myself of Davis, and cultivated it.

7th Int. State whether said portion that was cleared had or not the appearance of having been in cultivation many years before you became acquainted with it, and if there were fruit trees of any kind then growing upon it; state their size and probable age, as near as you can.

Answer. It had the appearance of being cultivated several years before I came to the country. And there was peach trees growing upon the place of considerable size, I would suppose some ten years of age, from the look of them.

8th by same. Were you acquainted at any time with one Jessee Shubird? if so, state when, where, and how long you were acquainted with him, and where he removed to, if you know, and where he now lives.

Answer. I became acquainted with Mr. Shubird in the year 1847, and was acquainted with him, I think, about three years in Ducktown. I do not know where he moved to when he left that country. I heard, though, about a year, that he was living near Chattanooga.

9th Int. Were you acquainted with his general character?

Answer. I used to be at the time I was acquainted with him.

10th Int. From that general character would you consider him entitled to credit upon his oath?

Answer. Well, sir, I would not.

11th Int. Were you acquainted at any time with one Crawford Braswell; if so, state when, where, and how long you knew him, also where he now lives, if you know?

Answer. I am acquainted with Mr. Braswell; I think I became acquainted with him in the spring or summer of 1848. I will not be sure of the time, in Ducktown. He then worked at the forge with me. I think I knew him about two years. He then left, and went to North Carolina, Cherokee County. Since that I have heard that he is living at or near Chattanooga, Tenn.

12 Int. Were you acquainted with his general character?

Answer. I was somewhat acquainted with it.

13th Int. From that general character would you consider him entitled to credit when upon oath.

Answer. No, sir, I would not.

14th Int. Are you acquainted with the general character of Young Davis, and also of Elias Davis.

Answer. Yes, sir.

15th Int. Would you consider them entitled to credit upon their oath?

Answer. I would.

Cross-examination.

1st Int. by complainant's agent. What possession had John Davis of the land in dispute?

Answer. He had part of a field on it.

2d Int. by same. What was the size of that field, and how much of it was on the land in dispute?

Answer. It strikes me that the field was called a twelve acre field. My notion is that there was about four acres in it at the time I was cultivating. There might have been more or less.

3d Int. by same. Do you know precisely where the line runs between the land in dispute and the lot on which John Davis lived?

Answer. I do not know precisely.

4th Int. by same. Did the field to which you allude include the ground on which stood a house formerly occupied by Luther Wallace?

Answer. Yes, sir, that is the field I allude to.

5th Int. by same. Was there any public road or path, much frequented, passing near to the side of Luther Wallace's house?

Answer. I suppose the road, leading past Copper Hill, was in three hundred yards of the house, where it was said one Wallace lived.

6th Int. by same. In what year did you rent the field from John Davis?

Answer. I can't answer positively, but I think, about the year 1849 or 1850.

7th Int. by same. Under what title did John Davis claim the land in dispute?

Answer. I am not able to answer.

8th Int. by same. Please to state whether Crawford Braswell did or not live in the family of David Carter, son-in-law of John Davis?

Answer. He lived with Mr. David Carter a portion of his time, and the balance of his time, I think, with James A. Davis, son of John Davis.

9th Int. by same. Was or was not Jesse Shubird a tenant of John Davis whilst he lived in Ducktown?

Answer. Yes, sir, he was living on Mr. Davis's land.

10th Int. by same. Please to state whether the reputation of Elias and Young Davis, sons of the late John Davis, does or does not stand better in the community, since the death of their father, than before that time?

Answer. Well, for the last four or five years, their reputation does stand better: I consider they act more noble, more right.

10th Int. by same. Have you ever been called upon to discredit either Elias or Young Davis in a court of justice?

Answer. Not before to-day.

11th Int. by same. From your knowledge of the character of Young and Elias Davis, in the year 1852 or 1853, would you have believed them on oath in a matter in which they were interested?

Answer. In the year 1848 or 1849, if I had been called on, I expect I should not believed them.

Re-examination.

Int. by resp'ts' sol. If they had not been interested in any way, at the time you have last spoken of, would you have believed them?

Answer. I would have believed them had not been interested.

2d Cross-examination.

1st Int. by complainant's agent. Please to state whether Elias Davis was or was not generally known in Ducktown as the agent of William Park Lea, for selling his lands in that region?

Answer. I do not know.

And further this deponent saith not. B. C. DUGGER.

No. 23.

Depo. of Humphreys P. Kimsey for Resp'ts. Oct., 1855.

Humphreys P. Kimsey, aged about 29 years, being next duly sworn, deposes as follows:—

1st Int. Are you acquainted with the land in dispute, known as Copper Hill; and, if so, how long have you known it?

Compl't objects to above witness being examined because no notice was given. A. G. WELCHER, *Sol.*

Answer. I cannot say that I am. I am acquainted with the land there that was said to be Davis' land.

2d Int. Have you at any time been acquainted with one Jesse Shubird, and also one Crawford Braswell; if so, state when and where, and also whether you were acquainted with their general character?

Answer. I knew the two men when they were in Ducktown. I do not remember the year exactly, but think it was in 1848 or 1849. I suppose I was some little acquainted with their general character.

3d Int. From their general character, would you consider either of them entitled to credit upon oath?

Answer. I do not think I could give either of them credit when upon oath.

Compl't does not waive his objection to taking the depo. of H. P. Kimsey, but propounds interrogatories as matter of safety, &c.

Cross-examination.

1st Int. by compl's sol. Are you acquainted with the general character of Jesse Shubird and Crawford Braswell since they left Ducktown, and how long is it since they left there?

Ans. I am not acquainted with their general character since they left Ducktown. I suppose it has been some five or six years since they left there.

2d Inter. When they had no interest in the result of the suit, would you not think them reliable?

Ans. I do not think I could.

3d. How long did they live at Ducktown, and did you know them personally?

Answer. I think they lived there about two years—that is, Mr. Shubird lived there that long; Braswell, perhaps, not that long. I barely knew them when I saw them.

4th Inter. At what time did you become acquainted with their general character, and from whom did you learn it?

Ans. I suppose shortly after they come there. I never knew either of the men before they come there. I heard of Mr. Shubird before he come there. I become acquainted with their general character from the neighbors in the settlement where they lived. I cannot tell exactly who they were.

5th Inter. Are you acquainted with Young and Elias Davis; and, if so, how long have you *have you* known them?

Answer. I am acquainted with them. I think it was in the year 1847 when my *farther* moved to Ducktown. I have known Elias Davis ever since that. I had a small acquaintance with Young Davis when I first came to the country, and he moved off, and for some years I did not see him. It is but a short time since he moved back. I would suppose he has been back something like twelve months.

6th Int. Are you acquainted with the general character of Young and Elias Davis, or either of them?

Answer. I am some, of course.

7th Inter. From their general character, are they or either of them entitled to credit on oath?

Ans. At the time I come to Ducktown there appeared to be two parties there. There appeared to be a Davis party and a party against them. For a few years past, from the time I became perfectly acquainted with them, I could believe them. At first I *I* was like a great many others, scarey. At that time I do not know that I would have been willing to have believed them. It was not a great while until I formed a pretty smart acquaintance with Elias Davis. My father bought his land of Elias Davis. He was very gentlemanly with him; very much so.

Quest. 8th. Who seemed to be at the head of the party opposed to the Davises when you first knew them?

Answer. I do not remember exactly the leading characters among them.

9th Inter. Are you acquainted with John Conner, and was he not the head of said party, and was it not called the Conner party?

Ans. I am acquainted with John Conner. I think he was the ringleader of the opposite party.

10th Inter. Are you acquainted with the general character of John Conner?

Ans. I suppose I am tolerably well acquainted with the character of Conner.

11th. From his general character, do you think John Conner entitled to credit on oath?

Answer. I would suppose that he was at the present time, if he was not drunk. It has been some three or four years since I considered him entitled to credit on oath.

12th Inter. Was John Conner ever a Justice of the Peace; and, if so, when?

Answer. He was elected Justice of the Peace, but I do not recollect the precise time. I believe he was a Justice four or five years back.

Re-examination by Resp'ts' Sol.

1st Int. Were not the persons you heard speak unfavorable to the Davises when you first went to that country, men who were personally hostile to them?

Ans. They appeared so.

2d Int. Would you not have believed them upon oath, at any time after you fully acquainted with their general character, in a matter where they could have no feeling or interest?

Answer. Yes, sir.

3d Int. Is not Young Davis a preacher of the gospel, and in good standing in the Baptist church of which he is a member.

Answer. Young Davis is a preacher, and is in good standing in his church as far as I know.

Re-cross-examination.

1st Inter. How long has Young Davis been a preacher of the gospel, and in good standing in the Baptist church?

Answer. He has been a preacher ever since I knew him.

And further this deponent saith not. H. P. KIMSEY.

No. 24.

Deposition of Emmons P. Douglass for Resp't.

Be it remembered, that on this 17th day of December, 1855, I, James Smith, by virtue of the power in me vested by the commission hereto prefixed to examine all witnesses whatsoever, as well on behalf of William Pinckney Lea, complainant, as of the Polk County Copper Company and others, defendants, or either of them, in a certain matter of controversy now *depending* in the Circuit Court of the United States, held at Knoxville, for the eighth judicial circuit in the district of East Tennessee, did cause to come before me Emmons P. Douglass, John F. Hannah and George M. Coleman, at

the court-house in Benton, Polk County, Tennessee, as witnesses on the part of defendants in said suit; and the said Emmons P. Douglass, aged about 38 years, being first duly sworn upon the Holy Evangelists of Almighty God, that the evidence he shall give in the above case shall be the truth, the whole truth, and nothing but the truth, deposes and says as follows:—

Question 1 by *by* resp'ts' sol. If you are the clerk of the County Court of Polk County, Tenn., please state how long you have held that office.

Ans. I was first qualified on the first Monday of April, 1848, and have served to this date.

2d by same. State if the tax lists of the land in Polk County since its organization as a county are in your office. If so, state whether there has any land ever been listed in the name of Wm. Pinckney Lea, the compl't in this suit, in the Ducktown district.

Ans. The several lists of the county are in the office, but I cannot answer positive without examination.

3d by same. Please make the necessary examination to enable you to answer the question from the record.

Ans. I have examined the record, and do not find that Wm. Lea's name appears as having any land in the 8th district.

4th by same. By the 8th district do you mean the Ducktown district, and by Wm. P. Lea do you mean the compl't?

Ans. By the 8th dist. I mean that portion of Ducktown within Polk County known as the Copper Mine, and by Wm. P. Lea I mean the complainant.

5 by same. If there has been any lands listed in Polk County in the name of complainant, state in what district said lands have been so listed, and during what years.

Ans. In the year 1843, first district, I find Wm. P. Lea listed with seventeen hundred and eighty-four acres. Also 1844, William P. Lea eleven hundred and eighty-four acres, first dist.; and in one or two other cases Callay and Lea, but no first name is given.

6 by same. Is or not the 1st district the one in which the Savannah farm is situate?

Ans. Yes.

7 by same. Please examine and state what am't of land, if any, is listed in the Ducktown district, in the name of John Davis, from the year 1842 to 1852. Also state if the tax list show any description of the land except the district and No. of acres.

Ans. In 1842, John Davis, 277 years. In 1843, John Davis, 517 acres. In 1844, John Davis, 817. In 1845, John Davis, 1313 acres. In 1846, John Davis, 700 acres. In 1847, John Davis, 740 acres. In 1848, John Davis, 700 acres. In 1849, John Davis, 700 acres. In 1850, John Davis, 790 acres. In 1851, John Davis, 890 acres; and in 1852, John Davis, eleven hundred acres: all in the 8th dist., known as the Copper Mine dist. All the statement given in the tax list is the number of acres and the valuation as set by the

Revenue Commissioner, and the number of the district, year, and report of the commissioner.

Cross-examination.

1st Interrogatory by Complainant's agent. Was it usual for persons who had entered lands in the Ocoee District to attend to listing them for taxes before they got grants for them?

Ans. The citizens of the county are inquired to give in their taxable property, and make affidavit of the entire amount of all they possess to the Revenue Commissioner.

2d Int. by same. Are you aware or have you any means of showing whether any person has ever paid taxes on the land in dispute?

Ans. I have no means of knowing any further than before stated.

3d Int. by same. How many acres belonged to the Savannah Farm and its appendant mountain lands, after the entries made by Complainant on 15th April 1842?

Ans. I have no means at this time of knowing.

4th Int. by same. If you are acquainted with the general character of Complainant, please to state whether he is not a quiet peaceable man, averse to litigation.

Ans. Some eight years past I was more acquainted with complainant, and did not know him to be concerned in any suits but a few small suits before a justice's court, and that in the dist. of our residence.

5th Int. by same. Is not the complainant remarkable for a minute attention to small matters, whilst often negligent of larger interests?

Ans. I was of that opinion during my acquaintance with him on the Savannah Farm.

6th Int. by same. Is your office as clerk kept in the same room with that of the register of Polk County?

Ans. We have kept our offices in the same room for the two last terms, of four years each.

7th Int. by same. If Elias Davis, son of the late John Davis, visited your office in December, 1852, please to state the object and circumstance of that visit.

Ans. I have no means of identifying the time of his visiting unless by reference to the record.

8th Int. by same. Did not Elias Davis visit *visit* your office a few days after his brother, Young Davis, was understood to have left for Arkansas, shortly after the purchase of the land in dispute by Keith, Mastin, and Caldwell, from the late John Davis?

Ans. Elias Davis has been frequently in my office during times of business, but as relates the time of Young Davis leaving for the west, I cannot specify anything further than what I may find from the record; and from that I find, that on the 28th January, 1853,

Elias Davis proved the signature of William P. Lea, and I certified the same.

9th Int. by same. Did not Elias Davis visit your office some two or three weeks before that visit of 28th Jan'y, 1853, and if so, did he not inquire for a deed, which he stated that his brother, Young Davis had taken, as he said, to Cleveland to be there proven by him?

Ans. I have some recollection of Elias Davis calling at the office for a deed that was not found, afterwards he stated the deed had not been filed.

10th Int. by same. When Elias Davis enquired for the deed as named in your last answer, did he not express great apprehension that his brother, Young Davis, may have left for Arkansas without proving the deed which he was then seeking?

Ans. I do not recollect positively at this time the conversation and expressions made by him.

Re-ex. by Resp'ts' sol.

Question. Is not the complainant a close saving man, and one that looks carefully after his interests and takes good care of his property.

Ans. My opinion was, the man was very careful of some thing, to the neglect of others.

Further this deponent saith not. E. P. DOUGLASS.

No. 25.

Deposition of William Grant, for Resp't. Nov., 1855.

William Grant, aged about 63 years, being duly sworn, deposes and says as follows:—

Question by respondents' sol. If you saw resp'ts Keith, Caldwell and Thomas W. Mastin, dec'd, pay to John Davis the purchase money for the lands they purchased of said Davis, including the lands in dispute, known now as Copper Hill, state what amount they paid him, and when they paid said purchase money.

Answer. I was at Benton, in Polk County, and saw Caldwell and Keith there, and saw them pay the money, and Davis asked me to count it, and I done so, and there was six thousand dollars. It was directly before Davis moved to the West. It has been more than two years ago. I cannot fix the date precisely. It was at the same time the deed was executed.

And further this deponent saith not. WILLIAM GRANT.

No. 26.

Deposition of William R. Witt, for Resp't. Nov., 1855.

William R. Witt, aged about 50 years, being next duly sworn, deposes and says as follows:—

Question first by respondents' counsel.

Question 1. If you ever lived in Ducktown, state when you went

there, how long you resided there, and when you removed from that country.

Answer. I moved there in 1840. I think, as well as I recollect, I lived there seven year. I think it was in 1847, as well as I recollect, that I left them.

2 by same. During the time you lived in Ducktown, how far did you reside from the land in dispute, now known as Copper Hill?

Answer. About two miles, I should call it.

3d by same. During the time you lived there, were you well acquainted with that section of country, and the mountains west of it?

Answer. I was well acquainted with the boundary of Ducktown, and was tolerably well acquainted with the mountains west of it.

4th by same. Were you well acquainted with the old Indian trail running from Ducktown in the direction of Benton, on the Savannah farm, on Hiwassee River?

Answer. There is one leading from Ducktown down to Benton—the old Indian trail—with which I was well acquainted, crossing Greasy Creek just above where white lives.

5th by same. State what constituted the western boundary of Ducktown.

Answer. I do not know whether it came to the mountain or went over it. I do not know.

6th by same. State if you know where William Watkins had a camp, on or near the old Indian trail, for the purpose of herding cattle, in 1842.

Answer. I never saw the camp, never having passed the road after that.

7 by same. Do you know where that trail crossed Rock Creek?

Answer. Yes, sir.

8 by same. How far is it from Copper Hill by the old Indian trail to where it crossed Rock Creek?

Answer. I reckon it is about six or seven miles, as well as I recollect.

9 by same. How far is it from Copper Hill to where Elias Davis lived in 1842, now known as the Kirbey place?

Answer. They used to call it five miles, I think.

10th by same. How far is it from the Kerbey place to where the trail crosses Rock Creek?

Answer. It I would something like a mile and a half, and may be two miles.

10th by same. State whether or not you ever knew of the cattle herded by Watkins in 1842 being in Ducktown, or the neighborhood of Copper Hill.

Answer. No, I never knew or heard of them being in any way near Copper Hill.

11th by same. State if you were in the habit of hunting in the mountains west of Ducktown in 1842, and if so, did you see the sign

of the cattle kept by Watkins? If so, state where you saw the sign of said cattle.

Answer. I have been through there on hunting sprees. They said he was keeping cattle, and I saw their sign on the top of the mountain west of Ducktown. I do not recollect exactly the year, but do not think that he kept cattle there more than one season.

By same. Did you ever see the sign of the cattle east of the Big Mountain, that runs west of Ducktown?

Answer. No, I never did.

By same. State whether or not the country round Copper Hill was thickly settled in 1842, and whether any cattle were ever herded in that section.

Ans. It was thinly settled in 1842, and never any cattle were herded in that section, that I know of, by any man that lived out of there.

By same. Did you ever know of any of the citizens that lived there keeping or herding cattle for other people in that section.

Ans. No, sir, I never did.

Cross-examination by Complainant's Counsel.

Question 1st. Please state whether you ever heard, by neighborhood report, or general rumor, about the cattle herded by Watkins in the mountains being frightened or run out of the range; and if so, please to state how, when, and by whom it was done.

Answer. I heard of them being run out from about Greasy Creek, and about a bear skin being tied on a yearling and frightening the balance of the cattle, and them being run out. I do not recollect the date they were run out. I heard that the old man, Rymer, said that if he knew who it was he would try at them.

2d. On what mountain is that on the top of which you say you saw signs of the cattle said to be kept by Watkins?

Answer. I think the little Frog Mountain. It is the mountain west of Brush Creek.

Re-examination by Resp'ts' Sol.

How far is Greasy Creek from Ducktown?

Answer. I would suppose it to be some fifteen miles or over.

And further this deponent saith not. WM. R. WITT.

No. 27.

Deposition of Benjamin Mann.

Benjamin Mann, aged about fifty-five, next introduced, sworn and examined on behalf of the respondents.

1 Question by respondents' solicitor. Esq. Mann, you will please state if you are the regularly appointed county surveyor of Polk County, Tennessee.

Ans. I am.

2 by same. You will please state if you are acquainted with the land which is the subject matter of dispute in this suit.

I am.

3 by same. Have you made a survey of the land in controversy? if so, when did you make it, and state who were the chain bearers, and were they sworn to carry the chain correctly?

Answer. On the 16th of July, 1855; John Rogers and Wilson Crumly were chain bearers. Sworn to bear the chain correctly. I also have made a survey of the land in controversy on the 16th of July, 1855.

4th by same. Was John Rogers the man who acted as chain bearer, the same man who has been examined as a witness in this cause?

He was.

5th by same. You will now please give a detailed account of the survey made, stating your starting points, courses, distances, and all the facts connected with it. State if you made a plot of your survey; and if it is a correct one, you will please refer to it, and adopt it as a part of your answer to this question, and append it to your answer.

Answer. Survey made the *the* 16th day of July, 1855, by Benjamin Mann, County Surveyor of Polk County, John Rogers and Wilson Crumly sworn chain bearers: Beginning at the southeast corner of the school property, or section 16, and runs south 70 degrees east eighty-six poles to the wagon road. Pursuing the same course seventy-two poles further through a field to a mill pond, all the way on the marked section line of section 15, to the field, thence north 20° east, inside the field designated Luther Wallace's old field thirty-two poles, to the corner of the field; thence north eighty degrees west twenty-eight poles, inside the field twenty-eight to another corner of said field; thence south 4 degrees west inside the field to the section line twenty-eight poles; thence south 70 degrees east twenty poles, with said section line to the mill pond again, which includes that part of the field north of the section line, and containing four acres and a half and twenty-six poles. From the corner of that part of the field at the mill pond north 17° west eight poles, to an old house place near some peach trees, reputed to be Wallas' old house place.

Answer. I have made a plot. It is a correct one, and that I hereby refer to it and adopt it as a part of my answer to the question, and append the same to the answer, marking it with the letter A, from which the particular of the plot and survey will more fully appear.

6th by same. You will please state if the survey you made and have detailed in your last answer embraces the property known as Copper Hill, and describe its location in said survey.

Answer. It is in the same quarter designated by Ch.

7th by same. You will give the range, township, section, &c., of the land in dispute, embracing Copper Hill.

Answer. Range 5 east, fractional township 4 south, and the southwest quarter of section fifteen.

Cross-examination.

Question 1. How long have you lived in Tennessee, and how long have you been surveyor of Polk County? Have you the original field notes of the State's surveys of the vicinity of the land in dispute, or do you know where they are?

Answer. I have been a resident of the State of Tennessee, Polk County, two years, in August last. I do not recollect that day of the month I came into the state of Tennessee. I have been County Surveyor something over one year. I have not the original field notes of the public survey of the vicinity, and do not know where they are.

Ques. 2. By what means have you been able to identify the lines of the original surveys in the vicinity of the lands in dispute?

Ans. I was called on to survey on the shoal land, and previous which is the 16th section, and which designated all lands joining it, or in the vicinity of the same. I had run the lines of the school section previous to the survey on the 16th of July last.

Ques. 3. Please to state what notes or data you had as your guide in determining the original boundaries of the 16th, or school section, when surveyed by you as you state in your last answer.

Answer. I had none of the original field notes, only a general map of the County of Polk, and I was governed by the marked lines and corners.

Ques. 4. By what means did you identify the marked lines and corners referred to in your last answer with the original lines and corners of the State's survey?

Answer. There were stakes at the corners, and marked lines to them, with witness trees around the corners.

Ques. 5. Please to state whether you took any measures to identify the stakes you say in your last answer were at the corners as the original stakes set by the State's surveyor.

Answer. I did.

Ques. 6. Please to state whether the stakes so found were the original stakes set by the State's surveyor.

Ans. The marks had every appearance of original mark or marks and from one section corner to another was three hundred and twenty poles.

Ques. 7. You speak of marked trees about the corners, please to state whether the marks on the trees appeared to be of the age of the original survey, or of a more recent date.

Answer. The witness's trees, and the marked lines, appeared to be made at the same time, or at the time of the original survey.

Ques. 8. When making the survey of the school section, had you

any authenticated or reliable copy of the field notes of the original survey?

Ans. I had no original field notes, only the maps.

Ques. 9. Have you any knowledge of the existence of two sets of meridian lines run by the State's surveyor in the vicinity of the land in dispute? and if so, by which set are you governed in your survey?

Answer. I know of none but on basis line.

Ques. 10. Have you any information of the existence of magnetic iron ore or other minerals liable to affect a surveyor's needle in the vicinity of the land in dispute? and if aye, state what measures you may have used to correct consequent errors in running lines.

Answer. I have not discovered anything to affect the magnetic needle.

Ques. 11. At what time of the day on the 16th July last, did you run the line from the S. E. corner of the school section to the S. E. corner of the land in dispute, and did you make any connection in running said line for the diurnal variation of the needle?

Ans. It was in the evening, as well as I now recollect, and I run on the old marked line.

Quest. 12. Please to state, as nearly as you can, from information, when the lands in the vicinity of that in dispute were originally surveyed, and whether the natural course or direction of the needle has changed since that time, and whether in running the lines on the 16th July last, you made allowance for such change, if any.

Answer. From the best information, the original survey was made in eighteen hundred and thirty-seven, and that the needle of my compass falls a little on the left hand of old lines, in Polk County.

Ques. 13. Please to state whether you found any marks to indicate the exact position of the original corner mark at the southeast corner of the land in dispute.

Answer. I found the mill pond near the point referred to, and consequently no marks could be found.

Ques. 14. Please to state whether the whole of the field marked on your plot Exhibit A, appears to have been all cleared at the same time; and if not, what part, and how much has been more recently cleared?

Answer. The part on the south of the spring, including the peach orchard, appears to be land cleared a good while ago. But on the north of the spring appears to have been cleared more recently. The oldest part I suppose to contain about two acres.

Ques. 15. Please to state, as nearly as you can guess, the distance from the former site of the house occupied by Luther Wallace, to the spring referred to in your last answer, and whether that spring affords good water all the year.

Answer. The spring from the old house place I would suppose to

fifteen or twenty paces. The water of the spring was good the 16th of July when I was there.

Re-examination.

1st Question. You will please state if you have ever surveyed the school land to which you have referred; and if so, state if the corners were all distinctly marked, and did they appear to be as old as the original survey, and were the corners where the lines crossed also marked the same way fronting both ways.

Answer. I have surveyed the school property referred to, and the corners, all in their proper plans, with the marked lines pointing to them from every angle and corners, have their witness trees. The marks appeared to be old marks, as old as the original survey.

2d by same. Were you governed by the school land corners in surveying the land in dispute, and did you find the corners on the disputed land marked in this same way, and at the proper places?

Answer. As far as I did find, I found them correctly, and I was governed by the school land corners in the disputed survey.

And further this deponent saith not.

BENJAMIN MANN.

Exhibit A to the Deposition of Benjamin Mann.

The within plat and survey proved by Benjamin Mann before me on this 26th of September, 1855, marked exhibit (A).

JOHN H. PAYNE, *Com.*

(For plat see original page 991.)

Survey made the 16th day of July, 1855. By Benjamin Mann, County Surveyor of Polk County, John Rogers and Wilson Crumly, sworn chain bearers. Beginning at the southeast corner of the school property on section 16, and runs south 70 degrees east eighty-six poles to the wagon road, crossing the same course seventy-two poles further through a field to a mill pond, all the way on the marked section line of section 15 to the field; thence north 20 degrees east inside the field, designated Luther Wallace's old field, thirty-two poles to the corner of the field; thence north 80 degrees west twenty-eight poles to another corner of said field; thence south four degrees west inside the field to the section line; thence south seventy degrees east twenty poles with the section line to the mill-pond again.

Which includes that part of the field north of the section line, and containing four acres and a half and twenty-six poles, from the corner of that part of field at the mill-pond north seventeen degrees west eight poles to an old house plan near some peach trees, reputed to be Wallace old house place.

BENJAMIN MANN,
C. Surveyor of Polk County.

JOHN ROGERS and WILSON CRUMLY, } C. B's.

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No 28.

Deposition of William Watkins. (*Sept.* 1855.)

William Watkins, aged about fifty-nine years, next introduced, sworn an examined on behalf of respondents.

1 Question by solicitor of respondent. You will please state if you are acquainted with William Pinckney Lea, the complainant in this suit; did you ever keep cattle for him in Polk County? I mean herd them, and if so, when was it and where did you herd them?

Answer. I am tolerably well acquainted with him. He has staid at my house a great many nights. I salted cattle for him there one summer season. I have no dates of it, I did not keep any dates of the year at all. I herded them out the other side of where I live, about seven miles, some call it the Frog Mountain, and some the Crooked Mountain.

2d by same. You will, if you please, state as near as you can, the year or summer season during which you salted the cattle, give as near the year as you can.

Answer. I have not any idea within myself what year it was in, only a suit I fitched against William Lea and Calvin Maples, before a Justice of the Peace, whose name was Joseph Childrees.

The record says the suit was brought in 1843, but I do not know whether he put the record right. The suit was brought the year after I kept the cattle.

3d by same. For what was the suit before the Justice of the Peace brought, to which you allude in your last answer, and was it against William Pinckney Lea, the complainant in this suit?

Answer. It was brought as they drove their cattle out to where I was, they lost some cattle as they went along, and they hired my son-in-law to fetch the cattle out to where they camped keeping cattle. In coming out the next time they were to pay him, and they failed to do it; well, they asked me if I would settle with him, and they would settle with me again; I settled with him, they never paid me until I fetched the suit against them, and that was the occasion of me bringing the suit. And William Pinckney Lea was one of the defendants, the present complainant in this suit.

4th by same. You will please state if during the time you kept cattle for them you know of their cattle being run from the mountains, by whom it was done, if at all, and where they were run from.

Answer. I do not know that they were run entirely out of the mountains; they were scattered powerfully by some persons, I do not know who they were. I do not know exactly, where they were run from, it was said they were run out of the settlements of Ducktown, was the first start of it.

5th by same. State if you ever heard William P. Lea, the complainant, say anything about his cattle being run off; if aye, state all he said about it.

Answer. Yes; Mr. Lea appeared to be angry, and said that he would have land all through them mountains to keep his cattle on.

There was a great many words past that I do not recollect, but I recollect very well that he said that much.

6th by same. Did he or not say he would come to Frank Lea and buy land? and if he did, state all he may have said in that connection.

Answer. I can't recollect all he said, no how, but I believe there was something said about his coming to Frank Lea or some other man and getting land.

7th by same. How far is it from what you have designated as the Crooked or Frog Mountain to where the land now in dispute lies? is there a large mountain between these points; and if so, did complainant Lea ever drive his cattle over it? and how far is it from the point were you settled the cattle to the land in dispute?

Answer. I can tell how far it is to the first settlement of Ducktown where one of the young Davis' lived, it is between three and four miles from where I salted the cattle to where Elias Davis lived. I do not know the distance from there to Copper Hill. There is a good large mountain between the points. He did not drive his cattle over it that I know of.

8th by same. State if at the time you had the conversation with complainant Lea about his cattle being run from the mountains about which he seemed angry, he said he had no lands in the mountains, but that he intended to go and buy some from Frank Lea, or from any other person.

Answer. Well, I think, as well as my recollection is, that he said something about buying land from Frank Lea or some other person. He would have land for his cattle to run on all through the mountains, was the word he said.

9th by same. Was it or not your understanding from the conversation you had with complainant when spoken of, that he then owned no land in the mountain?

Answer. I did not understand him, that had not entered any land in the mountain gentleman, at all.

Cross-examination.

Question 1. You say that you herded cattle for Lea and Maples. Please to state the first names of said parties, where they lived in the year 1842, what time of year they engaged you to take the charge of their cattle; at what season they took them to the range; whether they had desired you to take them earlier; where did you tell them they were when they left the cattle under your charge; what was the appearance of the vegetation at that time; how many cattle had they altogether under your charge; and what did you tell them about the probability of the cattle dying for want of food?

Answer. I always called Lea, William Lea, and Maples, Calvin Maples; I never heard till this suit commenced any other name for them. After the suit commenced, I think it was James Calvin and William Pinckney. I don't know that I can tell where they lived

in 1842, I have no dates, I was engaged to take charge of their cattle as quick as the grass would rise in the spring of the year.

I cannot tell exactly the day they fetched them, but somewhere between the 10th and 15th of April. They wanted me to take them sooner than I did take them. I don't know that I told them where they were only out in the mountain where the cattle was kept, grass was very short, sir. I do not recollect, but think I had betwixt 50 and a hundred. I told them I thought some of their cattle would die for the want of food, for the grass was not long enough for them to live.

Ques. 2. Where did Lea and Maples reside at the time you herded their cattle?

Answer. Maples lived at his father's on the waters of Chestua, on the north side of Hiwassee River, and Lea lived at the place always called Savannah, on Hiwasssee River.

Ques. 3. How far from the Savannah where Lea lived to where you lived when you herded cattle for him, and how many mountains lay between your two residences on the road usually travelled?

Answer. I do not think the road has been measured; I think it is called about eight miles from where I lived to where he lived. A right smart hill to go up out from the river to where I live, but no mountain.

Ques. 4. Did Lea and Maples take their cattle by your residence in taking them to the range, and where did you advise them to leave them, and what reasons did you give them for such advice?

Answer. Yes, sir; they took them by my house and staid all night there; I was not at home, I was out at the camp when they fetched their cattle the next day; they told me they staid all night; I left word for them to bring the cattle on out where I was building a little house to stay in while I was keeping them.

Ques. 5. How did you and your neighbors in ordinary conversation distinguish between the settlements on the north side and the south side of Frog or Crooked Mountain?

Answer. The settlement we lived in, the Indians called it Spring Town. The Indians called over on the other side of the mountain, Turtle Town and Ducktown.

Ques. 6. Was or was not the name Ducktown at that time and since, generally used to designate all that part of Polk County lying east and south of Frog Mountain?

Answer. I think Turtle Town and Ducktown included that part, sir.

Ques. 7. When Lea and Maples left their cattle with you, did you inform them that they were in what was then generally understood to be a part of Ducktown?

Answer. I think they named to me whether they were in Ducktown or Springtown, and I told them they could call it as they pleased, that I did not know which it was. I did not know where the township line was, nor don't know yet.

Ques. 8. When the cattle were "powerfully scattered" in the range, as you have heretofore stated, did you send information of the fact to Lea and Maples? if so, by whom, and what message did you send as to the probable cause of its being done?

Answer. I sent word to them both, I do not recollect which one, but by some one of my family. My understanding was that some of the Turtle Town or Ducktown fellows had tied a bear skin on one of them. They said their cattle was mischievous and should not run in the mountain. I think there was something said about their not owning land there, and they should not keep mischievous cattle in the mountain.

Ques. 9. In gathering the cattle after dispersion, did you find any of them in the Ducktown settlement, or had any of them previously roamed there, as you were informed?

Answer. I never drove no cattle out of the settlements of Ducktown or Turtletown. I was informed by divers of folks that they run in there, frequently done mischief in there.

Ques. 10. When Lea and Maples came up to see about their cattle after they had been scattered, and Lea spoke of getting land in the mountains, for what purpose did you understand he wished to get it?

Answer. Mr. Lea, when he came out and found his cattle was scattered so bad, said he would have land all through them mountains, and then he would let them know whether they would run his cattle or not.

Quest. 11. In answer to the previous questions you have spoken of Wm. P. Lea in connection with Francis W. Lea; are you sure that Wm. P. Lea said that he was going to *buy* land of any person, or did he only say that he would get land in the mountains?

Answer. I think that he said he would either buy land or get land, I think he said he would buy from Frank Lea or some other person.

Quest. 12. At the time you kept cattle for Lea and Maples, was there any vacant land in the mountains, according to your information and belief, at that time?

Answer. I don't know whether there was vacant lands or not.

Ques. 13. In your suit against Lea and Maples, did you get judgment against them or they against you?

Answer. I don't recollect which way it was at this time.

Quest. 14. You spoke of a mountain between the camp where the cattle were salted and the land in dispute; how high is that mountain as compared with Frog Mountain?

Answer. It is not as high as the main Frog Mountain on the south side of Ocoee.

And further this deponent saith not.

his
WILLIAM + WATKINS.
mark.

No. 29.

Depo. of William L. Pace for Resp'ts. Sept. 1855.

William L. Pace, aged about forty-four years, next introduced, sworn, and examined on behalf of the respondents.

1st Question. Mr. Pace, you will please state if you are acquainted with the parties to this suit.

Answer. I know the parties. I know William P. Lea. I know Thomas H. Calloway. I know John Caldwell when I see him. I know Alexander H. Keith when I see him, and that is all.

2 by same. You will please state if you know where Copper Hill, the land in dispute, lies.

Answer. I know where Copper Hill lies, sir.

3 by same. You will please state if you ever herded cattle for William P. Lea, the complainant; if yea, when, where, and how long?

Answer. I never salted any cattle for William P. Lea, in the name of William P. Lea, at no time. I salted cattle for Caswell Lea for two years; but if William P. Lea was known in it, I never knew it. He was a brother of William P. Lea's. The years I kept the cattle was in the years 1844 and 1845, the year after Mr. Watkins kept the cattle, which was in 1843. Well, sir, I would not undertake to keep the cattle without counselling my neighbor, John Runnion, he agreed that I might keep them by his going in and getting part of the profits that year. Well, the second year, I salted them myself, that is, in 1845, he had no hand in it. I think some of the animals were of the same stock. Some of the lead ones Watkins kept for William Pinckney Lea the year before, and I salted that stock on my own property, I mean my own land. The year that Watkins salted the cattle for William Pinckney Lea, he came to my house, hunting and inquiring for his stock, and eat his dinner, and I have not saw him since, which will be twelve years this fall, about the time of coming of cold weather.

4th by same. You will please state to whom the cattle belonged that William Watkins salted or herded in the year 1843, if you know.

Answer. They belonged, if I understood the thing right, to three or four men, not that I know pointedly myself, only from what the neighbors said. Well, from what the neighbors said, William Lea was one of the men Caswell Lea, Mr. Gilbreah, Mr. Newman, and Calvin Maples.

5th by same. Did William P. Lea live upon the farm of his brother Caswell, and merely act as agent for him in the transaction of business, about this time?

Answer. Well, sir, that was the report in the neighborhood, that he was doing business for Caswell Lea.

6th by same. Did you ever have any conversation with either

Caswell or William P. Lea about their right to keep cattle in the mountains, by their owning or not owning land in the mountains; and if so, what was said on that subject?

Answer. I never did, sir.

7th by same. Did the Leas, or either of them, ever tell you they relied on you or your possession for the protection of their cattle in the range? and if so, which one of them?

Answer. Caswell Lea had a conversation with me, and relied on my possession for protection. If they had any authority there I should not counselled my neighbor about the stock.

8th by same. How far is it from where William Watkins salted the cattle spoken of in the year 1843, to Copper Hill, the land in dispute?

Answer. Well, the road wa'n't measured, but I would say about nine miles, or some where in the bounds.

9th by same. How far from where you settled the cattle in 1844 and 1845, to Copper Hill?

Answer. Well, sir, it is thirteen or fourteen miles.

10th by same. Is there or not a large mountain between the point where Watkins salted the cattle, and also the point where you salted them, and Copper Hill?

Answer. There is a mountain between where I salted and Copper Hill, and also between where Watkins salted and Copper Hill.

11th by same. While Mr. Williams herded the cattle, did you and he build a cabin for him to stay in, while he was herding them; and if so, had the land on which you built it been entered before that time, and by whom?

Answer. The day that Mr. Lea brought the cattle into the mountain, or to the place, the very day we raised the cabin, me and Watkins, in the very place where the cattle was kept. The land that I lived on was entered at the time Frank Lea made the big entry, and I bought of him secondhandedly in the year 1842. And it was the understanding among all the neighbors that Frank Lea had entered all the land on the mountain at one cent at *at* general entry. Two of the neighbors, John Runnion and James, purchased land of Frank Lea at the same time I did, in the year 1842, and are now living on the same land. This cabin was built as Mr. Watkins said, on the general entry of Frank Lea.

And further this deponent saith not. W. L. PACE.

No. 30.

Abram H. Rutherford, aged about 33 years, a witness for resp'ts, being introduced and sworn, deposes and says:—

Question by resp'd'ts' sol. If you saw the compl't, William Pinckney Lea, on his way to a trial in Polk Co. between him and William Watkins, state what year it was that you saw said Lea going to said trial, and what he told you the trial was to be had about.

Answer. I saw him in the year 1844, going to the trial between

himself and Watkins, and my understanding was that it was about a suit between him and Watkins for Watkins salting his cattle. He was not talking particularly to me about it, but it was at the dinner table at my father's house, and he was telling Hezekiah Cooke about the matter, who was there at the same time. He had been up the day before seeing about his cattle that my father, Larkin Rutherford, and myself were tending to at that time.

By same. If compl't then stated in what year Watkins had kept the cattle for him about which the suit was pending, state what year he said Watkins had kept them.

Answer. I don't know particularly that he named it at that time.

Cross-examination.

1st Int. by same. When did your father, Larkin Rutherford, keep cattle in the range for complainant?

Answer. In the years 1844 and 1845.

2d Int. by same. Where did complainant have his cattle in the range in the year 1843?

Answer. He had them in the Greasy Creek Mountains or Frog Mountains, in the care of Mr. Watkins.

3d Int. by same. Where did compl't have his cattle in the range in the year 1842?

Answer. I have no knowledge of where he had them.

4th Int. by same. Did Col. J. C. Maples and others have their cattle under the care of Watkins in 1843?

Answer. That I cannot testify to, as I do not know. Wm. Pinckney Lea, J. C. Maples, and Mr. McCauley, had their cattle in the mountains near my father's, 1844, but whether they had them together the year before I don't know.

5th Int. by same. Where did J. C. Maples have his cattle grazed in 1843?

Answer. I can't tell where they kept them unless they were together, and that I don't know.

6th Int. by same. How do you know that Watkins kept Lea's cattle in 1843?

Answer. When Mr. Lea came to us to keep them he said he wanted them kept on the north side of the Hiwassee River, that, owing a difficulty that occurred in relation to the cattle the year before, the people would not suffer them to be kept where he had been keeping them. The people were not willing for Watkins to keep them any longer.

7th Int. by same. Did Mr. Lea, the complainant, express any dissatisfaction with the manner in which Watkins had attended to his cattle?

Answer. He did. I heard him say at one when he had been out trying to gather up his cattle, and that him and Mr. Watkins were in the mountains together, and that Mr. Watkins directed him to go a nearer road to his (Watkins') house, and that Mr. Watkins

was to go another way, perhaps a rougher way a foot, and they were to meet at Mr. Watkins' house. He said he went on to Mr. Watkins' house and waited there for Mr. Watkins, but that he came by a still-house and got tight, and never got home, and he staid at the house of Watkins.

8th Int. by same. Did Mr. Lea complain that Watkins was very intemperate, and neglected to attend to his cattle?

Answer. I don't know that he did, particularly, further than I have before stated.

9th Int. by same. Did Mr. Lea say that a great inducement for him to bring his cattle to the north side of the river was because he had greater confidence in your father than in Watkins as herdsman?

Answer. I don't know that he did. It might have been that he did. It has been a long time ago, and I cannot remember every particular circumstance that occurred.

10th Int. by same. Did not Mr. Lea say, whilst his cattle were in the care of your father, that if he had a man like Larkin Rutherford to take care of his cattle on the south side of the Hiwassee River, he would prefer to keep them there?

Answer. I believe he said something to that amount, or that if he had a good trusty man to take care of his cattle, he would rather have them kept in the Wyatt Smith Cove or Camp, or something to that amount, where there was a favorite range.

11th Int. by same. Did you hear the compl't, at any time whilst his cattle were under your father's care, speak of any right or claim he had to keep his cattle where Watkins had herded them?

Answer. No, sir, I never did.

12th Int. by same. May it not have been the cattle of Col. Maples that were kept by Watkins in 1843, and not those of complainant?

Answer. I reckon it couldn't have been Maples'. It was Wm. P. Lea's. On account of the law suit before referred to, I should say they were Lea's cattle.

13th Int. by same. Do you know whether Lea and Maples had their cattle in the range together at any time before your father took charge of them?

Answer. I do not.

14th Int. by same. Have you any knowledge of Lea's cattle being in the care of Watkins in 1843, besides what you heard him say?

Answer. No, sir, I have not.

15th Int. by same. Do you know whether the services rendered by Watkins, for which he claimed pay from Mr. Lea, were performed in the year 1843, or at some previous time?

Answer. Yes, sir. I think from Mr. Lea's own conversation the services were rendered in 1843.

16th Int. by same. Have you a distinct recollection that Mr. Lea said Watkins kept his cattle the *next* year before your father kept them; or might it not have been the year before that?

Answer. It was just the year before we kept them.

17th Int. by same. May it not have been Col. Maples' cattle that Watkins kept in 1843, and not those of Mr. Lea?

Answer. No, sir, they were Mr. Lea's cattle he kept.

18th Int. by same. Did Watkins sue Col. Maples for services similar *similar* to those rendered to Mr. Lea?

Answer. I don't think he did, tho' I'm not able to say. He sued William Lea; that I had from Lea's own words.

Re-examination by Resp'ts' Sol.

Question. State, if you know, where the Wyatt Smith Cove is, and how far it lies from the Copper Mines in Ducktown.

Answer. It is about 4, 5, or 6, from Dodson's Mills on the trail leading from Dodson's Mill on Hiwassee River to Turtle Town. I never was at Ducktown, but should think it some 15 or 20 miles from Ducktown, and it may be that far, or it may not be so far.

Second Cross-examination.

1st Int. by complainant's agent. Is the Wyatt Smith Camp (or Cove) to which you allude in your last answer, or the waters of what is generally known as Lost Creek?

Answer. No, sir, I think not. It was further up in the mountains than that stream.

2d Int. by same. How was the suit to which you allude in this deposition, of Wm. Watkins against Wm. P. Lea, decided?

Answer. I can't answer exactly, though I rather think that Mr. Lea gained. Of this I am not certain.

Question by resp'ts' sol. How far is the Wyatt Smith Cove from the Hiwassee River?

Answer. Some two, or three, or four miles.

And further this deponent saith not.

A. H. RUTHERFORD.

No. 31.

(And one No. 35 attached.)

Samuel Madden, a witness for respondents, aged about 55 years, being introduced and sworn, deposes and says as follows:—

Question by respondents' sol. If you know what year William Watkins herded cattle for Lea and Maples in the mountains west of Ducktown, state what year it was, and how you are enabled to fix the date.

Answer. I know that he herded cattle for Lea and Maples in 1843. In the year 1842, a man by the name of Harvill, whose deposition has been taken in this cause, and myself went through the mountains in the old Ducktown trail to Dahlonega, Georgia. At that time there were no cattle salted on that trail, and there was no cabin; and then, in the year 1843, we went back to work again, and travelled the same trail; and in that year there was a cabin there,

and Mr. Watkins was salting cattle there that he said were the cattle of Lea and Maples.

By same. How you are enabled to recollect that it was in the year 1842, when you and Harvel first went together along the old Ducktown trail?

Answer. We were fixing to get land that year, and it was that year that the land fell down to one cent per acre, which enables me to recollect the year. This man Harvill was also living that year with Warren Dobson, and he was wanting to get some land; and our travelling to Dahlonega together, and counting back to those circumstances enable me to recollect the year.

By same. If you know what year the cattle of Lea and Maples were run out of the range, state what year that was, and how you know that fact.

Answer. They were run out in the year 1843. They were taken there in the spring, and I had heard that they had been run out; and in passing there late along in the summer, I did'n't see any cattle there. I never saw the cattle run out, but heard that a bear-skin was put on one of them that run the cattle all out that range. I didn't see anybody about the cabin either.

By same. If you know what time in the spring the cattle were first taken into the range, state what time it was.

Answer. I don't know what time they were taken out.

Cross-examination.

1st Interrogatory by complainant's agent. Please to state whether you saw and conversed with the complainant, Wm. P. Lea, at a house on the turnpike road to Ducktown, near the mouth of Greasy Creek, on or about the 15th December last.

Answer. No, sir, I don't recollect it.

2d Int. by same. Were you there at that time?

Answer. I don't know whether I was on it at that time or not.

3d Int. by same. Did you converse with any person about your knowledge of the facts just detailed in your deposition, about the time and place named?

Answer. I don't know. I have talked with a good many persons about it since the suit has been commenced, and at divers times and places.

4th Int. by same. Were you personally acquainted with the complainant at the time named?

Answer. I have known Bill Lea ever since he lived at the Big Savannah, and since he took cattle to the mountains. I believe that was the first acquaintance I had with him.

5th Int. by same. Where did you first become acquainted with the complainant whom you call Bill Lea?

Answer. At the Big Savannah.

6th Int. by same. What was your business at the Big Savannah when you first became acquainted with the complainant?

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Answer. I was buying corn of him, and he measured it to me.

7th Int. by same. At what time in the year were you at the Big Savannah buying corn?

Answer. It was in the spring of the year, about corn-planting time, or somewhere about that time.

8th Inter. by same. Were Lea's cattle in the range at the Watkins camp at the time you were at the Big Savannah to buy corn?

Answer. No, sir, not that I know of. I don't know whether they were or not.

9th Inter. by same. Were you at the Big Savannah to buy corn more than one time?

Answer. Whether I went there to get corn more than one time or not, I don't now recollect.

10th Inter. by same. Were did you live at that time?

Answer. I lived on the north side of the Hiwassee, close to Carter's Ford.

11th Int. by same. Did Lea and Maples drive their cattle by your house on their way to the range?

Answer. No, sir, they didn't.

12th Inter. by same. At what place did they cross the river when taking their cattle to the range?

Answer. I don't know, sir.

13th Inter. by same. How do you know that Lea kept his cattle in the range near the Watkins camp the year you bought corn of him?

Answer. I don't know where he had his cattle that year. He might have had them at home, or he might have had them in the range.

14th Inter. by same. Where did you live in the year 1842?

Answer. I lived on Greasy Creek.

15th Inter. by same. On what place on Greasy Creek?

Answer. On the place where Joel Harvill now lives.

16th Int. by same. Where did Anderson Parker live when Lea's cattle were in the range at the Watkins camp?

Answer. I don't know whether he lived on Hiwassee, or where he lives now. I don't remember when he moved out to where he now lives.

17th Int. by same. Where did James Glass live the year Lea's cattle were kept by Watkins at the camp?

Answer. I don't know whether he lived on Greasy Creek or over the mountain, where he moved to.

18th Int. by same. How far did James Glass live from you on Greasy Creek?

Answer. Something between two and three miles. I should judge close on three miles.

19th Int. by same. How many years did James Glass live on Greasy Creek?

Answer. He was hired for a year by Isaac Smith, but I don't think he staid quite the year out.

20th Int. by same. Were Lea's and Maples' cattle run out of the range before, or after, or during the time James Glass lived at Isaac Smith's?

Answer. I don't know, sir.

21st Int. by same. When did you move from Greasy Creek to the Carter Ford?

Answer. I moved from Carter's Ford to Greasy Creek. I never moved from Greasy Creek to Carter's Ford. The time I moved I can't now recollect.

22d Int. by same. In what year did you buy the corn of complainant, as before stated in this deposition?

Answer. I don't know, sir.

23d Int. by same. How do you know that Lea's cattle were kept by Watkins the year you first became acquainted with him?

Answer. The time I became acquainted with Lea he lived at the Big Savannah. That year I didn't know where he kept his cattle, whether in the mountains or at home.

24th Int. by same. When you saw cattle at the Watkins camp, in 1843, how did you know they were Lea's?

Answer. Watkins said they were. He said he was keeping cattle for Lea.

25th Int. by same. Was Watkins herding cattle at the time you were at his camp, in 1843, for other persons besides Lea?

Answer. I understood that Maples had some cattle with Lea's, but didn't hear of anybody else having cattle there.

26th Int. by same. In passing the trail to Ducktown, in 1842, might you not have failed to see the Watkins cabin, though it might have been previously erected?

Answer. I could not have failed to have seen it if it had been there. It is between 50 and 60 yards of the trail.

27th Int. by same. Were you at Charles' store, at McKissack's, near the mouth of Greasy Creek, on the 19th of December last, and did you meet the complainant there at that time?

Answer. I don't know that I did. I might have been there at that time, but I never went there purposely to meet any one at that time.

28th Int. by same. Do you recollect being at the store of Oliver Charles, near the mouth of Greasy Creek, on or about the 19th December last, in company with John Runnion, when Abram McKissick and Oliver Charles were also present?

Answer. I am on the river so often that I never know what days I go unless I go on some particular business. I live close there, and sometimes go down two or three times a week; sometimes on business, and sometimes when I have no business. I am there so often that it is hard for me to recollect the days I am there.

29th Int. by same. Is John Runnion often on the river about the mouth of Greasy Creek?

Answer. Pretty tolerably often.

30th Int. by same. How many summers did Watkins herd cattle at his camp over the mountain?

Answer. I never knowed them or heard of them doing it but one time or summer.

31st Int. by same. Has John F. Hannah conversed with you in regard to the evidence you could or would give in this cause since you were notified that your deposition would be taken?

Answer. No, sir, he has not.

32d Int. by same. Did you not say to Wm. P. Lea, the complainant, at Oliver Charles's store, on Ocoee River, near the mouth of Greasy Creek, on or about the 19th of December last, that you could tell all about when the cattle were run out of the range, and that it was in the year 1842, or words to that effect?

Answer. I had stated to him and several other persons at first, it is very like, that the cattle were run out in 1842. But by comparing facts and running back and thinking over the matter, I found out that I was mistaken, and that it was in the year 1843.

33d Int. by same. Why did you at first think that it was in 1842 that the cattle were run out of the range?

Answer. There were several of the neighbors about talking about it, and said it was in 1842, and I supposed that that was the time from that fact. I had not thought much about it then, and supposed they were correct. I thought a good while that it was in 1842.

34th Int. by same. With whom have you conversed in regard to the time when the cattle were run out of the range, so as to change your opinion as to the date?

Answer. I have conversed with Mr. Joel Harvill, and we having travelled that trail backwards and forwards about that time, and I found out that I was mistaken about the time.

35th Int. by same. Have you not from the year 1840 to the present time been in the habit of using ardent spirits very excessively?

Answer. Sometimes I take a spree, and then again it is some time before I take another. I don't limit myself, and take a spree whenever I feel like it.

36th Int. by same. Might you not have been in such a condition when you passed the Indian trail to Ducktown in 1842 as not to see very well or recollect what you saw?

Answer. No, sir. There were no groceries on the road, and nothing to drink. I always went backward and forward sober.

Re-examination.

Question by respondents' sol. What time in 1842 was it that you and Joel Harvill went along the old trail together towards Geo.?

Answer. I reckon it was some time in November.

And further this deponent saith not. SAMUEL MADEN.

W. M. Bain, a witness for respondents, aged about 33 years, being next introduced and sworn, deposes and says:—

Question by resp'dts' sol. If you have in your possession any papers executed by William Park Lea, please state what said papers are, what is their date, and how the said Lea signed his name to each of them.

Answer. I have in my possession a bond given by said Lea dated the 28th day of June, 1849, and a note given by said Lea bearing the same date. In the body of the bond his name is written William Park Lea, and the signature at the bottom of the same is written William P. Lea. The signature to the note is written William P. Lea. The said bond and note are here exhibited before the commissioner.

And further this deponent saith not. W. M. BAIN.

No 32.

Joseph Harvill, aged about 46 years, a witness for resp'ts, being duly sworn, deposes and says as follows:—

Question by respondents' sol. State where you lived in the years 1842 and 1843.

Answer. In 1842 I tended land belonging to Warren Dodson on Greasy Creek. In 1843 I lived on Greasy Creek and waggoned in Georgia, and travelled backwards and forwards to my home on Greasy Creek, and sometimes travelled through Ducktown.

By same. If you know what year William Watkins herded cattle for Lea and Maples in the mountains west of Ducktown, state what year that was, and how you are enabled to fix the date.

Answer. It was in 1843. I was at the house of said Watkins in that year, and he told me that he was herding the cattle of Lea and Maples, and I saw him salting them, and he had a house built for the purpose of keeping the cattle there. I left Alabama in April, after the death of President Harrison, and the people were hanging crape about their doors and meeting-houses about a week before I started. The following summer in June I boarded hands on the 19th section of the railroad in Walker County, Georgia. The next summer I tended Warren Dodson's land on Greasy Creek, and the next summer I wagoned in Georgia, and passed back and forwards, and saw the cattle there when passing. I saw the cattle some 7 or 10 miles this side of the Copper Hill.

By same. If you heard of the cattle of Lea and Maples having been run out of the range, state what year they were run out.

Answer. My best judgment is that it was in 1843.

Cross-examination.

1st Interrogatory by complainant's agent. Please to state when the cabin where you saw Watkins salting the cattle was built.

Answer. My best judgment is that it was built in March or April, 1843.

2d Int. by same. Upon what grounds do you form your judgment that the Watkins camp or cabin was built in 1843?

Answer. Mr. Dodson told me he was going to help build a cabin for the purpose of keeping Lea and Maples' cattle. He told me this before I started to Georgia; and I went on out to Georgia, and when I came back the cabin was up. I didn't see them at work on the cabin.

3d Int. by same. When did you first pass along the old Indian trail, from Greasy Creek by Kirby's, to Ducktown?

Answer. I judge it was about the 15th of September, 1842.

4th Int. by same. Please to describe, as accurately as you can, where the Watkins camp stood when you first saw it.

Answer. It stood about 65 or 70 yards from the Ducktown trail, on the left side of the trail going same way or *or* in the direction of Dahlonega, near what was called Crooked Creek.

5th Int. by same. Did Wm. Watkins keep cattle in the range near his camp, on the trail to Ducktown, more than one year?

Answer. Not that I know of. If he ever kept them there but one year I never knew it.

6th Int. by same. Did you pass along the trail by the Watkins camp the year after you say you saw Watkins salt cattle there?

Answer. I did twice the year after, but never saw any cattle there, nor Watkins either on that trail, and no sign of the cattle being kept there in the range.

7th Int. by same. Did William Watkins herd cattle in the range the year before you saw him salting them?

Answer. Yes, sir; he kept cattle and salted them at his own house. I understood the then kept by him belonged to Calvin Maples, Kincannon and Gilbreath. I went then that year after a cow and calf, and got them out from among the cattle.

8th Int. by same. In what year did President Harrison die?

Answer. In 1841, in the spring, I reckon.

9th Int. by same. How are you enabled to recall the date of the death of President Harrison?

Answer. I left Alabama that spring about a week after they were hanging up crape after his death. And I know where I lived the next year, and the next year after that.

10th Int. by same. Do you recall, then, the date of President Harrison's death from the time when you lived on Greasy Creek?

Answer. I lived on Greasy Creek, and made a crop in the summer after his death; that is, the summer of the next year after his death.

11th Int. by same. Can you tell what year James Glass lived on Isaac Smith's place on Greasy Creek?

Answer. He lived there in 1842; the same year I tended Warren Dodson's land.

12th Int. by same. Please to state what year John Runnion made a crop on Greasy Creek.

Answer. I don't know anything about that.

13th Int. by same. In what year did the price of lands in the Ocoee District fall to one cent per acre?

Answer. I suppose that was on the 5th of April, 1842; the same year that I lived and made a crop at Warren Dodson's.

14th Int. by same. Do you keep any memoranda of events by which you are enabled to recall dates?

Answer. No, sir, I do not. I keep it by my head and business. I am no scholar. I don't know a letter in writing.

15th Int. by same. Are you very sure that when you went to Watkins' house for the cow and calf, that he told you he was keeping Maples' cattle?

Answer. Yes, sir; Calvin Maples, Kincannon and Gilbreath.

16th Int. by same. Where did Kincannon live, whose cattle Watkins was keeping?

Answer. I don't know. I never saw the man that I know of.

17th Int. by same. Are you sure that Watkins told you he was keeping cattle for *Kincannon?*

Answer. Yes, sir.

18th Int. by same. Did not Watkins keep cattle for one Robert Cannon, who lived near Philadelphia, in Monroe County?

Answer. I do not know.

19th Int. by same. When, where, and from whom did you first hear of Lea's and Maples' cattle being run out of the range?

Answer. I heard either when I was coming from Georgia or after I got home in 1843, but I can't say positively whether I heard it before I got home or not, or from whom I heard it.

20th Int. by same. Are you quite certain that Watkins did not keep cattle at his camp, where you saw him salting them, the *the* year after you saw them there?

Answer. If he did I have no knowledge of it.

21st Int. by same. In what year did you move from Alabama to Georgia?

Answer. In 1841.

22d Int. by same. Have you been talked with by John F. Hannah as to the evidence you could and would give in this cause?

Answer. We might have been talking something about it, but nothing in particular as I now recollect of.

23d Int. by same. With whom were you at work in Georgia the year after you made a crop at Warren Dotson's?

Answer. I work some with a man by the name of Green Hall, and some with a man by the name of Bullfinch, and then for Harrison Riley some.

24th Int. by same. How many crops had you made at Warren Dotson's before you heard the cattle were run out of the range?

Answer. Only one.

25th Int. by same. For whom did you keep boarders on the railroad in Georgia?

Answer. James Smith and Aaron Burris.

26th Int. by same. Where do Smith and Burrins now live?

Answer. Smith run away, and the last I heard of Burris he was living down at Cassville, or in that neighborhood.

27th Int. by same. Where did Wm. Pace live when the cattle were run out of the range?

Answer. To the best of my recollection he lived at the Little Frog Mountain, where, I think, a man by the name of Jones now lives.

28th Int. by same. Was the Watkins camp, where he salted cattle, on the east or west side of Little Frog Mountain?

Answer. I think it was on the southwest side. That is my best judgment on it.

29th Int. by same. Is Ducktown on the east or on the west side of Little Frog Mountain?

Answer. It is on the east side.

30th Int. by same. How far from where Pace lived in 1843 to the Watkins camp?

Answer. I don't know. I never was across the mountains that way.

And further this deponent saith not.

his
JOEL + HARVILL.
mark.

No. 33.

Deposition of Walter Carruth, witness for Resp'ts.

Walter Carruth, aged about 70 years, a witness on part of respondents, being next duly sworn, deposeth and says as follows:—

Question 1st. State if you live in the neighborhood of Ducktown, and how long you have lived there?

Ans. I live about 12 miles from here, and about 4 miles from the boundary between Ducktown and Turtle Town. I moved there the 1st week in Ap'l, 1839.

2d by same. State if you know anything about Wm. Watkins herding cattle for Lea and Maples in the mountains west of Ducktown; and if so, what year he herded them.

Ans. From my own knowledge I know nothing. I *heard* he was *hearding* cattle there in 1843, but I don't know whose cattle they were.

3d by same. State any circumstances by which you are enabled to recollect that it was in 1843.

Ans. In 1843, a young man by the name of Bigby lived with me. We were out hunting and saw some cattle on the right hand fork of Brush Creek that enters into Hiwassee below Cook's Island, where William Pace now lives. They were on the head waters of the creek on the spurs of the mountain.

Cross-examination.

1st Int. by complainant's agent. Please to state whether there was not in your neighborhood, in the year 1843 or 1844, a stray steer, which was supposed to have been one of the cattle run out of the range when scattered by a bearskin being put on one of them.

Ans. He was there in 1844. He come in there in the spring and was nearly blind, and was mischievous, and we had him valued and killed him in the fall. Tho. W. Mastin came to George Wimbles in the fall of 1844, and said, as I understood him, that Mr. Lea had had some cattle in the mountains the year before, and had lost some by a bearskin being tied on one, and inquired particularly about the mark, and ascertained that the mark did not correspond with Lea's mark. And Esq'r Thrwitt convinced him that he was not Mr. Lea's steer.

2d Int. by same. Are you quite sure that Mastin stated that Lea's cattle had been scattered by a bearskin the year before he sought the lost steer? might it not have been two years before that?

Ans. It might have been two years before, but agreeable to my recollection it was the year before.

And further deponent saith not.

his
WALTER + CARRUTH.
mark.

No. 34.

Deposition of Thomas Wakefield.

Thomas Wakefield, aged about 59 years, being next duly sworn, deposes as follows:—

Int. by resp'ts' sol. Are you acquainted with the handwriting of the late John Davis, dec'd?

I am.

Int. by same. Look upon the paper now shown you marked exhibit (A) to the deposition of Elias Davis, and exhibit (B) to the deposition of John F. Hannah, and state from your knowledge of the handwriting of the s'd John Davis whether his name, as appears to said exhibit, is in his own proper handwriting.

Ans. I believe it is.

Int. State whether or not said John Davis was an acting justice of the peace in and for Polk County, Tenn., on the 25th February, 1842, the date of said exhibit.

Ans. It is my impression he was.

And further deponent saith not.

THO'S WAKEFIELD.

No. 36.

Deposition of John Conner for Def'ts.

John Conner, aged about sixty-five years, next introduced, sworn, and examined, on the part of the respondents.

1 Question by respondents' solicitor. You will please state, Esq'r Conner, if you are acquainted with the land in dispute in this suit known as the east half of the southwest quarter of section fifteen, known as the property of the Polk County Copper Company.

Answer. Yes, sir, I am acquainted with the land. I was one of the first settlers on the northeast side of the river. I think in the year 1840, Luther Wallace settled on that place.

2d Question. You will please state all you know about the occupant claim which Luther Wallace had on this property, and the sale of his claim by him to John Davis.

Answer. Well, I was not very much nor no ways interested in it, but my understanding was that Luther Wallace held the claim, and sold it to John Davis, at least both parties told me so.

3 Question by same. You will please state, if you know, what improvements were made by Luther Wallace on the land in dispute, and when they were made by him.

Answer. Well, he built some cabbins and cleaned some number of acres of land. I don't know how many. Well, if my memory don't deceive me, he went there in the year 1840, that he done part of the work in that year, but do not know how much. I think he done most of the work in 1841. I helped him raise one or two additions to the first cabbin.

4th Question by same. State if you know when Luther Wallace sold his occupant claim to John Davis, and when John Davis went into possession of the land in dispute.

Answer. I know when the land was transferred but do not recollect the date. I was living close by but did not charge my memory with the date. It was just about the time the land fell to one cent per acre.

5th by same. Please state all you may recollect about the entry of the land in dispute, and if there was a controversy between you and Davis about the entry of it, and how this dispute was settled between you and him.

Answer. There was some other land that I was interested in, and we both come to Cleveland to Mr. Lea's office; and when we come, Elias Davis, son of old John Davis, doing business for his father I suppose, took me out and made a proposal to me that if I would not interfere and enter any of the land, I think it was named the place on which Luther Wallace lived, and the place on which Young Davis lived—the place—on which Lucinda Wallace proved the occupant on, and I agreed to it, and my understanding was he entered it. I did not interfere with it nor he with mine.

6th by same. When did John Davis go into possession of the land in dispute; while in possession did he exercise all the acts of ownership over it and continue his possession up to the time he sold it, and when did he sell?

Answer. I do not recollect the date. As far as I know he exercised all the acts of ownership over it, and he put Wilson Aber-

crombie in possession of it, and he attended the land. I think he continued the possession of it up to the time he sold. I never heard anything to the contrary. I do not recollect the date, but know he sold to Esqr. Caldwell, Keith, and Mastin, was my understanding from the parties. Davis told me so himself, and so did Caldwell.

7th by same. Did John Davis go into possession of the land in dispute soon after it was entered? Also state, as near as you can, the time when he sold to Caldwell, Keith, and Mastin; if you do not recollect the precise date give the year or as near it as you can.

Answer. I think after the land was entered, Luther Wallace continued there some two or three years, but my understanding was, he was under the jurisdiction of John Davis, rented it I think. Well, if I do not forget, I think it was in the year 1853 or 1854, I do not know which.

8th by same. Was John Davis by himself or tenants holding possession during all the time until he sold, and during this time did you know of any other person setting up claim to the land now in dispute?

Answer. Davis was in possession of it all the time by himself or tenants, so far as I know. No other person was setting up claim to the land in dispute that I ever heard of, or recollect of.

Cross-examination.

Question 1. In the agreement which you state was made between yourself and Elias Davis, acting for his father, John Davis, at the land office in Cleveland, had you special reference to the tract now known as Copper Hill, or only to the land claimed by said Davis under his purchases from Wallace and his daughter Lucinda?

Answer. My understanding was, that I was not to interfere with them two tracts, the one that Luther Wallace held and the one that Lucinda held, which Young Davis was living on at that time.

Ques. 2. Did John Davis, or any one acting for him, at that or any subsequent time, actually enter the tract now in dispute? if any, in whose name was the entry made?

Answer. My understanding was that Elias Davis entered it for his father—the two tracts where Wallace and Lucinda held the claims.

Quest. 3. Please to describe by range, township, section, and quarter, the tract on which Lucinda Wallace claimed an occupancy, and which was sold to John Davis.

Answer. I do not believe much I can do it. The one I entered in was in the 14 section, and the one that Luther Wallace lived on was the 15. I could not say what was the number of the one Lucinda claimed, but it was close by then.

Ques. 4. State where John Davis moved the house which he purchased of Luther Wallace, and whether that is a part of the

buildings now known as the Murdock House; also whether the west half of the quarter south of the quarter upon which that house stands was entered before the price of unentered lands in the Ocoee District fell to one cent per acre; and if so, by whom, and at what price it was so entered; and also state whether the east half of said quarter south of the Murdock quarter was vacant at that time, and whether that was the tract or parcel claimed by Lucinda Ann Wallace as occupant, and was sold by her or her father to John Davis.

Answer. I do not know anything about the removal of the house. I was not there. I do not know anything about the Murdock property.

Ques. 5. Please to state whether the occupancy sold by Lucinda Ann Wallace was on the quarter upon which John Davis lived at the time he sold to Keith, Mastin, and Caldwell, or was it on the east half of the quarter south of that on which said Davis lived.

Answer. I do not know.

Ques. 6. At the time of your agreement with Elias Davis at Cleveland, referred to in your examination in chief, did you deem yourself debarred by that agreement from entering the land now held by the Polk County Copper Company?

Answer. These two occupants held by Luther and Lucinda Wallace, according to my word I did, but I was not sworn, or anything of that kind.

Quest. 7. State whether you know where the line between sections 15 and 22, fract'l township 4 south, range 5 east, was at the time Luther Wallace built his house in 1840 or 1841, and whether the improvement made by said Wallace was intended to be on the north or south side of said line.

Answer. I do not know that I personally know. I heard him say that he was going to settle on the 15th, that was the agreement that he was to go on the 15, I was on the 14th. Where the line run precisely I do not know.

Quest. 8. What acts of ownership did John Davis exercise over the lands in dispute?

Answer. I do not know, any more than he claimed it as his right, that he had bought the claim from Luther Wallace and Lucinda Wallace, and entered the land, or had it done.

Ques. 9. Were any additional improvements made on the land in dispute by clearing more land, or adding to the house, or fences, after it was taken possession of by John Davis, as you have stated, such as would tend to show that he held said improvements as appurtenances of the tract north of the sectional line, or, were all the improvements made by said Davis south of said land?

Answer. Well I do not know, but think he cleared some on the south side. The house was moved, but I do not know where. After Abercrombie left there, suits attended it one year, but do not know

what year, and may be Tom Small Wood attended it; he lived there at the mill, but whether he attended it I do not know.

Ques. 10. You say you owned land in sec. 14, state whether any part of section 15, lying between your lands in section 14, and the land in dispute, were unentered when you and Elias Davis came to Cleveland, and made the agreement referred to in this deposition, and whether at that time such lands were considered more or less valuable than the quarter section embracing the lands in dispute in this case.

Answer. Not that I know of, it was not.

Ques. 11. At the time the price of lands in the Ocoee District fell to one cent per acre, what was understood by yourself and neighbors to be the value of the two quarter sections along the south side of section 15, west of where you lived?

Answer. I do not hardly know how to answer that, for it was thought it was worth very little. That we entered we thought was worth the entry fees, and that we did not enter we never made no calculations upon.

Ques. 12. At the date named in last question, which did you consider most valuable, the quarter containing Copper Hill, or the quarter south of it on which John Davis formerly lived?

Please to state your reasons for your preference.

Answer. That I considered the quarter on which John Davis lived at that time a great deal the most valuable—on the account of the tendible land on it. We knew nothing of the mineral at that time.

Re-examination.

1 Question. You will please state if the occupant claim of Luther Wallace spoken of in this deposition, and the same he sold to John Davis, embraces what is now known as Copper Hill.

Answer. Well I can't say that. I do not know where the lines run, it may or may not.

And further this deponent saith not.

JOHN CONNOR.

No. 37.

Deposition of John Rogers.

John Rogers, aged about forty-five years, sworn and examined on the part of defendants:—

1. Question. Are you acquainted with the land in dispute between the parties; if so, how long have you been acquainted with it? If at any time there was an occupant claim on it, you will so state, and what become of said claim.

Answer. Well, I think I am. I have been acquainted with it ever since before it was entered. I suppose there was an occupant on it. From reports there was some person living on it at the time the act passed. I understood the claim was transferred to some person. I did not see it done.

2 Question. You will please state if on said land there was or not a field inclosing part of the same; if so, was said field on the land on the 5th day of April, 1842?

Answer. There was an improvement on it, and, if I am not mistaken, there was a family living on it about that time.

3d Question. State whether or not Benjamin Mann, of Polk County, Tennessee, recently run the lines of the 80 acres in dispute; if so, were you one of the chain carriers? If so, state whether or not a line was run dividing said 80 acres into forty acre tracts. State if or not said division line run through where a field used to be on said 80 acre tract.

Answer. Yes, sir, I suppose so. I was along with him when it was run. I was one of the chain carriers. We did not run all round the eighty acres. We commenced at the southwest corner of section 15, and run a half mile east to the southeast corner of the southwest quarter. The corner was standing near or in the edge of the millpond, we then run from the line pretty much north, where the old house stood on the same parcel of land that is in dispute. Then we commenced near the southeast corner, and run round the field that is cleared on the same piece of land which is in dispute. We run round to ascertain how much cleared land there was. We did not divide the 80 acres into two forties.

4 Question. You will please state if the old house you speak of and the field are or not on the 80 acres in dispute.

Answer. The old house place and the field is on that eighty acres.

5th Question. Do you know who cleared this field of which you have spoken; if not, state if or not John Davis, deceased, late of Polk County, ever had said field or any part of it in his possession, and if so, how long?

Answer. I think Mr. Luther Wallace cleared a part of it, but not all. I think John Davis, deceased, had a part of it in possession. Well, him or some of his sons perhaps had it in possession for some time, but I do not recollect how long.

5 Question. How far did you live from this land in 1846, and how far from it in 1853?

Answer. There was two years that I did not live up there, and do not know whether it would include 1846 or not, but I was in the same county in 1846. In 1852 I did not live more than two miles from it.

6 Question. Before John Davis sold to Keith, Caldwell, and Maston, you will please state if said field had been cultivated, and who it was that claimed and exercised ownership over it.

Answer. A part of it had been cultivated. John Davis claimed and exercised ownership over it.

7th. You will please state if there was at any time since you have known the 80 acres any other field on it; if so, state what part. State whether on the part claimed by the Polk County Copper Company or on that part claimed by the Mary's Mining Company.

Answer. Perhaps it might have included the corner of a little patch, but not in cultivation when I first knew it. If this was not on the 80 acres it was on the Mary's mining part. I think it was.

8 Question. You will please state if you carried the chain correctly, and also stuck the sticks accurately, in the survey made by Mr. Mann of the land in dispute.

Answer. It was carried right and proper so far as I know, and I think the stakes were stuck correctly.

Cross-examination.

Question 1. Describe the land in dispute by range, township, and section, and how it lies in reference to other known lots adjoining.

Answer. I think it is in range five east, fourth fractional township south, and section fifteen, the east half of the southwest quarter. It is bounded on the west by Patrick Nash's land, east by land owned by Nelson Carter, south by land formerly owned by John Davis, and north I do not recollect who in particular. The John Davis property on the south is in section 22, as I think.

Quest. 2. What part of the field cleared by Luther Wallace was in section 15, and what part in section 22, if any, and what was the size of said field?

Answer. A small portion of the field is on section fifteen, the north part, the balance of the field is in section 22, I think. The line we run run through the field. The size of the field I suppose was some six or eight acres.

Quest. 3. In running the line you say you began at the southwest corner of section 15. What did you find there to mark the corner? Did you find any standing mark for the S. E. corner of said quarter?

Answer. The surveyor cited both ways, and there we found the old stab, which we supposed had been put there for the old corner stake, down even with the leaves pretty much. In hunting about we discovered it was there. We did not find any at the southeast corner; the southeast corner was in the edge of the millpond. Passing there years before, I saw the old stationed trees; it was what they call a half mile stake.

Quest. 4. Under what title was John Davis understood among the neighbors to hold the field cleared by Wallace?

Answer. I do not think I recollect now what title he claimed it under.

Quest. 5. Did John Davis claim what is now known as Copper Hill under any title, as you are aware of, previously to his sale to Keith, Mastin, and Caldwell in 1852?

Answer. He claimed where that old house place was on the eighty acres in dispute, but I do not know anything about his titles.

Quest. 6. When and by whom was the clearing made on the land in dispute in addition to that made by Luther Wallace?

Answer. I do not know who made by. I do not suppose that it

has been cleared more than two years; some of it may be not that long.

Quest. 7. If in 1842 you had had your choice of entering the land in dispute or that immediately south of it, now known as the Murdoch lot, which would you have chosen, and why?

Answer. The land which lay in section 22 was most suitable for farming.

Quest. 8. When did you first hear that John Davis set up any claim to the lands now known as Copper Hill and Mary's Mining Company?

Answer. I think he has claimed it and had part of this field where the old house place was some eight or ten years.

Re-examined.

1. Question. You will please state if in 1842 there was an occupant claim on the Murdoch quarter, to which allusion is made in the 7 question of the cross-examination. Was there a house or cabin there on that Murdoch lot, and who claimed it?

Ans. I do not recollect whether there was or not.

And further this deponent saith not. JOHN ROGERS.